



## 312 An Employer's Guide to Safety & Health Regulations in the Workplace

**Preston M. Canzius**  
*Senior Counsel, Environmental Practice Group*  
Chevron U.S.A. Inc.

**Jose M. Chanfrau IV**  
*General Counsel*  
Downrite Engineering Corporation

**Christopher Flynn**  
*Assistant General Counsel*  
Siemens Power Generation, Inc.

**Neil H. Wasser**  
*Chairman of the Executive Committee*  
Constangy, Brooks & Smith LLC

## Faculty Biographies

### Preston M. Canzius

Preston M. Canzius is a senior counsel at Chevron U.S.A. Inc.'s Environmental Practice Group. His responsibilities include counseling his clients under the CAA, CERCLA, OSHA, RCRA and TSCA.

Prior to joining Chevron in, he served as chief EHS counsel for Cingular/AT&T Wireless and senior counsel EHS and employment for AT&T Corporation. While at Cingular/AT&T Wireless and AT&T, he counseled clients in all aspects of EHS law, risk management and employment law.

Mr. Canzius also was the vice president and on the BOD of ACC's Washington Chapter.

Mr. Canzius received a BSChE and MSChE from the New Jersey Institute of Technology and his JD from Tulane Law School.

### Jose M. Chanfrau IV

Jose M. Chanfrau IV is the general counsel for Downrite Engineering Corp. and its affiliates, Hurricane Waste, Hurricane Electric, Hurricane Landscaping, and American Environmental Recycling employing over 630 employees specializing in land development, paving, blasting, excavation, installation of sewer & water systems, hauling construction waste, landfill operations, electrical contracting, and landscaping in south Florida. Mr. Chanfrau's responsibilities include areas such as arbitration, management of outside counsel, worker's compensation, unemployment claims, managing insurance claims, FLSA, ADA, OSHA and litigation cost control.

Prior to joining Downrite Engineering Corp. Mr. Chanfrau was in private practice in Florida and Ohio representing individuals and businesses involved in real estate and international trade between the USA and Central and South America.

Mr. Chanfrau has provided pro bono counsel to low-income individuals relevant to hurricane related claims stemming from Florida's very active hurricane season.

Mr. Chanfrau received a B.A. and J.D. from the University of Alabama.

### Christopher Flynn

Christopher J. Flynn is assistant general counsel at Siemens Power Generation, Inc. in Orlando, Florida.

Mr. Flynn has practiced extensively for many years in the environmental, health and safety field, first with the Westinghouse Electric Corporation's environmental affairs organization, and, as counsel to the Westinghouse Power Generation business (which was acquired by Siemens). He has provided advice on a wide range of legal and regulatory matters, and his practice has included response to administrative, civil and criminal enforcement actions at both the Federal and state level. The Westinghouse and Siemens Power Generation businesses have provided power generation equipment and services throughout the world, with manufacturing, repair and service facilities in North America and in a number of other locations around the globe.

He earned his B.S. from the University of Pittsburgh and is a graduate of the Duquesne University School of Law, Pittsburgh, Pennsylvania.

### Neil H. Wasser

Neil H. Wasser is a managing member and chairman of the executive committee of Constangy, Brooks & Smith, LLC, a law firm representing management, exclusively, in labor and employment matters. Mr. Wasser is based out of the firm's Atlanta office, one of 14 offices across nine states. Mr. Wasser specializes in assisting companies with Occupational Safety and Health Organization (OSHA) compliance obligations and establishing safety and health programs, and he is widely recognized as a top national speaker on safety and health topics.

He is a member of the ABA and the State Bar of Georgia. Mr. Wasser currently serves on the board of directors of the Atlanta Humane Society.

Mr. Wasser earned his undergraduate degree from Tulane University of Louisiana and his law degree from the University of Georgia in Athens, Georgia.



## OSHA OVERVIEW

- OSHA Regulatory Framework
- Inspection & Enforcement
- “Whistleblower” and Non-Retaliation Provisions
- OSHA VPP and other programs



## OSHA OVERVIEW

- OSHA” is the “Occupational Safety and Health Act”, a/k/a the Williams-Steiger Occupational Safety and Health Act of 1970 (*29 USC 651 et seq.*)
- OSHA Web Site – [www.osha.gov](http://www.osha.gov)



## OSHA – THE ACT

Act established 3 new Government subagencies

- National Institute for Occupational Safety & Health (NIOSH)
- Occupational Safety & Health Administration
- Occupational Safety & Health Review Commission



## OSHA – THE AGENCY

OSHA empowered to:

- Promulgate safety and health standards for employers
- Conduct inspections and impose sanctions
- Mandate record keeping, workplace postings, and labeling requirements



## OSHA

OSHA regulations are to be interpreted broadly:

“In light of the act’s broad remedial purpose, the Act and regulations issued pursuant to it should be liberally construed to as to afford the broadest possible protection to workers.”

*Whirlpool Corp. v Marshall, 445 U.S. 1, (1980).*



## OSHA

OSHA Regulatory Scope:

- General Duty clause
- Specific “standards”
- Hazard Communication
- Recordkeeping and reporting requirements
- Inspection & Enforcement



## OSHA

- Very transparent process for employer
  - Postings of citations, as issued and settled
  - Employee participation and comment
- Confidential, for employee
  - Anonymity of complaints protected
  - Anti-retaliation provisions
- Regulatory sweep is broad
- Recordkeeping and reporting requirements are detailed



## OSHA COVERAGE

### Key Definitions:

- “employer” – a person engaged in a business affecting interstate commerce who has employees
  - Excludes – governmental employees, other than U.S. Postal Service
  - Partial exclusion for certain employers in other regulated industries, e.g., airlines, to the extent more stringent regulations apply
  - “Affecting commerce” has been construed broadly
- “employee” – an employee of an employer who is employed in a business of his employer
- No required minimum number of employees, like federal employment laws, for regulation – but small (less than 11 employees) employers exempt from recordkeeping/reporting
- Note: Act does not define “workplace”



## OSHA REGULATIONS

- Safety & Health Standards - voluminous, codified in regulations
  - Promulgated through Federal Administrative Procedure – i.e. notice, publication, comment
  - Focus:
    - safety – address recognize hazards, such as with power equipment, machines, electricity, ladders
    - health – exposure to chemicals, other environmental factors



## OSHA - REGULATION

- OSHA also employs numerous “other” documents as part of its regulatory process:
  - Compliance Guides
  - Interpretation letters and memos
  - Compliance Directives
- These are published, but do not go through rulemaking
- Example – multi-employer workplace rules



## OSHA - REGULATION

The “General Duty” clause: “Every employer covered under the Act must furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”

- Basis for regulation where no specific standard applies



## OSHA – GENERAL DUTY CLAUSE

Example of OSHA’s use of the General Duty Clause – the OSHA “Ergonomics Standard”

- Promulgated in late 2000
- Required employers to consider ergonomics in equipping workplaces, and conducting work
- Focus was repetitive motion injuries
- Very controversial, widespread industry comment and concern
- Withdrawn in 2002 by OSHA
- Since, OSHA citing employers under the general duty clause for ergonomic issues





## OSHA

- Standards – address both safety and health
  - Safety – more basic and easily identified hazards, such as those from machines, electrical shock, falls, falling objects
  - Health – exposure to chemicals and other environmental harm
  - General standards – apply across all industries, and include:
    - Electrical, confined space, lockout/tagout, personal protective equipment, ladders, lifts
    - Workplace standards for contaminants, toxics, noise, bloodborn pathogens
    - Hazardous communication standard
  - Industry specific standards
    - Construction, shipbuilding, power generation and transmission, logging, sawmills
    - Employers must comply with both general and industry specific standards
- Early standards derived from industry authorities, such as ASME, ASTM – “Consensus Standards”



## OSHA – HAZARD COMMUNICATION

- Requirement that employers have a written “Hazard Communication Program” advising employees of chemicals in workplace which may lead to physical or health hazards
  - List all hazardous chemicals known to be present
  - Chemical name and required warning on packages and containers
  - Employee training on hazards, proper handling, and emergency response
  - Maintenance of applicable Material Safety Data Sheets (MSDSs) in key areas
- Includes chemicals used by employee, used near employee, or generated through work



## OSHA – HAZARD COMMUNICATION

### Training:

- Must be in employee's language
- Prior to exposure to chemical(s)
- Identify where chemicals and hazards may be present
- Use of personal protective equipment
- Emergency response to chemical incidents



## OSHA – HAZARD COMMUNICATION

### MSDSs

- Provide detailed information on the chemical, specific hazards
- Required to be shipped with chemical by any manufacturer or distributor
- Must be readily accessible in the workplace by potentially affected employees



## OSHA - PROCESS SAFETY MANAGEMENT

- Applies to facilities which store larger quantities of hazardous chemicals
- Requires a written PSM plan, periodic audit, public notice and review
- Regulations at 29 CFR 1910.119.



## OSHA – ASBESTOS REGULATION

- Detailed regulations for employers generally, including detailed assessment, monitoring, training (*§ 1910.1001*)
- Applies to asbestos, asbestos containing materials (“ACM”) and “presumed” ACM (“PACM”)
- Also regulates building/facility owners (including non-“employers”) – e.g., required to identify, label/post asbestos and asbestos areas (*§1910.1001(j)(1) et seq.*, *§1926.1101(k) et seq.*)



## OSHA – ASBESTOS REGULATION

- Written “operations and maintenance” plan required – including periodic inspection and maintenance of ACM & PACM - as long as asbestos present
- Additional standards for construction/demolition at buildings/facilities where asbestos present (*§1926.1101*)



## STATE “OSHA” PROGRAMS

### State Approved Plans -

- “OSHA approves and monitors state plans and provides up to 50 percent of an approved plan’s operating costs.”
- States must set job safety and health standards that are “at least as effective as comparable Federal standards.”
- States free to regulate more stringently
- Must conduct “inspections to enforce standards”
- 26 States approved as of August 1, 2006



## STATE "OSHA" PROGRAMS

State Approved Plans (as of August 1, 2006):

Alaska	Michigan	South Carolina
Arizona	Minnesota	Tennessee
California	Nevada	Utah
Connecticut*	New Jersey*	Vermont
Hawaii	New Mexico	U.S. Virgin Islands
Indiana	New York*	Virginia
Iowa	North Carolina	Washington
Kentucky	Oregon	Wyoming
Maryland	Puerto Rico	

\*Approved for public employees only

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## OSHA - RECORDKEEPING

- Applies to employers with 11 or more employees
- Records must be kept at "single physical location" where employer's work is done.
- Otherwise, must be easily obtainable

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## OSHA PROGRAMS

- OSHA “Consultation” Services
  - OSHA will come to workplace and advise employers
- OSHA Voluntary Protection Program
  - “Management System” approach to compliance
  - OSHA reviews programs and facilities, and qualifies the company to one of 3 VPP “Levels”
  - VPP participants afforded reduced inspections, no citations if conditions are promptly abated
- New initiative to reach out to “mid-size” companies through outreach and involvement with local Chambers of Commerce

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## OSHA - INSPECTIONS

- “Compliance. . .officers. . .are authorized to enter without delay. . .any. . . establishment. . .[or] workplace. . .to inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner:
  - All pertinent conditions. . .
  - Question privately any employer. . .or employee
  - Review records required by this chapter and other pertinent records.”

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## OSHA INSPECTIONS

Can Arise Through:

- Individual written complaint to OSHA
  - Complainant can remain anonymous
- Event or other “imminent” danger
- Hospitalization of 3 or more employees
- Informal review
  - Your basic “friendly visit”
- Targeted Inspections



## OSHA - INSPECTIONS

Overview of Inspection Process:

- Inspections allowed with or without cause or warning
- Employer can refuse and demand a warrant (but usually do not)
- Employer cannot impose conditions on entry
- Inspectors do not need to witness violation or condition – as long as citation issued within 6 months of inspection
- Citations must be posted at workplace locations regardless of merit
- Inspectors cannot compel disclosure or testimony, and cannot take records without employer consent



## OSHA - INSPECTIONS

### Overview of Inspection Process:

- Opening and closing conference required
- Union reps can be present during meetings
- Can review records required to be maintained under OSHA, others with employer consent



## OSHA INSPECTIONS

- No requirement to give advance notice to employer unless:
  - Imminent danger
  - After regular business hours
  - Other special circumstances
- Any person who gives unlawful "advance notice" subject to fine or jail





## OSHA INSPECTIONS

- Inspector must present credentials
- Must identify “general nature and purpose” of inspection and identify records they wish to review
- Can take “environmental samples” and “take or retain” photos
- Can question any person – No duty to answer
- Use other “reasonable investigative techniques”



## THE CONDUCT OF THE INSPECTION

- Other “reasonable” techniques include:
  - Use of monitoring devices
  - Attachment of personal sampling equipment
- Can have third party (e.g., consultant) accompany inspector on showing of “good cause”
- Cannot unreasonably disrupt operations



## OSHA INSPECTIONS

- Inspector can investigate the complaint area and/or just “walk around”
- Can interview employees (in private)
- Can review records required to be kept under OSHA



## OSHA INSPECTIONS

- Act purports to protect trade secrets or other confidential information by criminalizing wrongful disclosure by OSHA employees
- Employer may identify certain areas as trade secret sensitive
  - Inspector needs “clear reason” to enter
  - Inspector must mark all photos/samples as confidential



## OSHA INSPECTIONS

Be Prepared:

- Know what you are required by law to maintain and provide, and keep that information up to date and handy
- Make sure MSDS sheets are available and accessible
- Make sure all required training is done and documented
- Cooperate – but know “when to say when”
- Consider requests for providing copies of information on a case by case basis, but best approach is to take the request under advisement after written request



## OSHA - ENFORCEMENT

### Citations

- Issued by the OSHA Area Director
- Hand delivered or sent certified mail



## OSHA - ENFORCEMENT

- **Civil Fines:**
  - **Classifications:**
    - ⊖ Willful
    - ⊖ Serious
    - ⊖ Other than serious
    - ⊖ Enhanced penalties for repeat violations, failures to abate
  - **De Minimus** – technical violation – usually no fine



## OSHA - CIVIL PENALTIES

- **Willful** violations - up to \$70,000 per  
(Aware of condition and did not address)
- **Serious** violations - up to \$7,000 per  
(Potential for serious harm and constructive employer knowledge)
- **Other than Serious** violations - up to \$1,000 per  
(Did not know, less grave threat)
- **Repeat** violations - up to 10X gravity based
- **Failure to Abate** violations - up to 30X original
- **Egregious** violations - willful \$ times every employee exposed or  
every machine in violation
- If **imminent danger**, can get a court order to remove and abate



## OSHA - ENFORCEMENT

### Criminal Penalties:

- Willful violation which causes death – up to \$10,000 and/or 1 year in jail
- Giving prior notice of inspection – up to \$10,000 and/or 6 months in jail
- False statements in a document – up to \$10,000 and/or 6 months in jail
- Remember – Federal sentencing guidelines may allow limited flexibility

## OSHA - ENFORCEMENT

### Additional Considerations:

- OSHA referrals to and cooperation with EPA, DOJ, other agencies with broader criminal enforcement powers
- Also can employ other traditional bases for federal prosecution, e.g. racketeering, mail fraud, false statements
- Also, prosecution potential under state homicide and other laws



## OSHA

- Retaliation for employee engaging in “protected activity” is prohibited
- Includes filing complaint, initiating a proceeding, testifying, giving information to an inspector, other “protected activities” (*see 29 CFR 1977.12 (a)*)
  - Remedies included reinstatement, injunction, back pay



## OSHA

- Not limited to retaliation by employer – any party, including unions, employment agencies, others in position to retaliate (*see Meek v. United States, 136 F. 2d 679 (6<sup>th</sup> Cir., 1943); Bowe v. Judson C. Burns, 137 F 2d 37 (3<sup>rd</sup> Cir., 1943)*)
- No protected right to walk off job because of unsafe conditions (*29 CFR 1977.12 (b) (1)*), but good faith refusal to expose oneself to a dangerous condition is considered by OSHA as “protected” (*29 CFR 1977.12 (b) (2)*)



## OSHA

- OSHA – Statutory authority under Sarbanes Oxley Act for review of SOX whistleblower complaints by employees.



## OSHA - ENFORCEMENT

Employer's right to contest:

- Within 15 days from receipt of citation, employer must either:
  - File a notice of contest with OSHA, or
  - Request an informal settlement conference with OSHA
- Informal conference will toll the date for filing a contest, but must be submitted after the conference if no settlement is reached



## OSHA - ENFORCEMENT

- Employer contests heard by administrative law judges at the Occupational Safety and Health Review Commission (OSHRC)
- Appeals of ALJ decision to the US Circuit Courts
- Findings of fact by OSHRC conclusive “if supported by substantial evidence on the record considered as a whole” (29 U.S.C. § 660 (a)); *Martin v. Bally's Park Place Hotel & Casino*, 983 F. 2d 1252, 1256 (3d Cir. 1993)



## OSHA – DEFENSES

OSHA must demonstrate:

- the applicability of the cited standard
- the employer's noncompliance with it
- employees access to the violative conditions, and
- the employer's actual or constructive knowledge of the condition.
- Employer's knowledge (or lack thereof) of **regulation** is not relevant





## OSHA – DEFENSES

Affirmative Defenses (available to employers):

- Infeasible/impossible to comply
- Greater Hazard created by compliance
- Employee Misconduct
- Procedural-citation not issued within 6 months of violation, lack of particularity, improper service
- Defenses based on “Multi-employer Workplace”
- Also:
  - Validity of the cited standard (exceeds OSHA statutory authority)
  - Not an “employer”
  - Employer – but not affecting commerce



## OSHA - ENFORCEMENT

- OSHA Electronic Enforcement Database
  - Identifies “repeat” violators
- Compliance history concerns
- Can jeopardize ability to obtain permits & licenses, Government contracts



**Session 312**  
**An Employer's Guide to Safety & Health Regulations in the Workplace**  
**Key Changes in the OSHA Recordkeeping Rules**

**Neil H. Wasser**

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**I. New Recordkeeping Resources**

**Old Resources**

- The Regulation
- The "Blue Book"
- Literally hundreds of recordkeeping Interpretive Letters

**New Resources**

- The OSHA Recordkeeping Web Page
  - <http://www.osha.gov/recordkeeping/index.html>
- The New Comprehensive Recordkeeping Handbook
  - The Regulation
  - The Regulation Preamble
  - The FAQs
  - The Interpretive Letters
  - <http://www.osha.gov/recordkeeping/handbook/index.html>

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## II. The Forms

- New OSHA 300 Log replaces the old OSHA 200 Log.
- The Current Form contains Column M(5) Hearing Loss.
- New OSHA 300A Form replaces the old OSHA 101 Form.
- Where Can I find the new Forms?
  - [www.osha.gov/recordkeeping/new-osha300form1-1-04.pdf](http://www.osha.gov/recordkeeping/new-osha300form1-1-04.pdf)



## Signing the New 300A Form

- “I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.”
  - **1904.32(b)(1)** *How extensively do I have to review the OSHA 300 Log entries at the end of the year?* You must review the entries as extensively as necessary to make sure that they are complete and correct.
- The 300A Form must now be signed by a “company executive.”
  - Section **1904.32(b)(4)** defines as “an owner of the company,” “An officer of the corporation,” “The highest ranking company official working at the establishment,” or, “the immediate supervisor of the highest ranking company official working at the establishment.”



## Posting the New Form

- **1904.32(b)(6)** *When do I have to post the annual summary?* You must post the summary no later than February 1 of the year following the year covered by the records and keep the posting in place until April 30.
  - (Formerly a one month posting requirement.)



## III. Injury / Illness - Recordkeeping Analysis

- Under the new Recordkeeping Regulation, injuries and illnesses are analyzed for recordability using the same analysis. A case is recordable if it results in:
  - Death
  - Days away from work
  - Restricted work activity or transfer to another job
  - Medical treatment beyond first aid
  - Loss of consciousness §1904.7(a)
- Under the old rules, different analyses applied.



## IV. Work Relationship

### Old Rules

- Parking Lot injuries – generally not work related.
- Eating and drinking injuries usually work-related.
- Personal grooming, self medication and self-inflicted injuries usually work-related.

### New Rules

- Parking Lot injuries – work-related except for motor vehicle accidents §1904.5(b)(2)(vii)
- Injuries while preparing food or drink for personal consumption or eating and drinking – not work-related §1904.5(b)(2)(iv)
- Injuries solely the result of personal grooming, self medication for a non-work-related injury, and intentionally self-inflicted injuries – not work-related. §1904.5(b)(2)(vi)



## V. Medical Treatment

- New rules on what constitutes “medical treatment” (recordable) v. “first aid” (not recordable).
  - OSHA has developed a chart of “first aid” treatments found at §1904.7(b)(5). Any treatment not on the chart = medical treatment.
  - Practice Pointer – this is a new chart that is different from the old Blue Book and should be studied and **posted** in the medical department.



## VI. Day Counts

- Employers are required to count calendar days rather than “scheduled” workdays. §1904.7(b)(3).
- The day that the injury or illness occurs is not counted as a day away from work or restricted work activity day (same as old rule). §1904.7(b)(3)(i).
- The count of calendar days and/or restricted work activity days may be stopped at 180 days. §1904.7(b)(3)(vii).



## VII. Restricted Work Activity

- The new rules specifically define restricted work activity as:
  - When a physician or other licensed health care provider (or the employer) recommends that the employee not perform one or more of his or her routine job functions, or not work the full workday that he or she would have otherwise been scheduled to work.
  - “Routine functions” are “those work activities the employee regularly performs at least once per week.” §1904.7(b)(4).



## VIII. Special Categories

- “Significant Diagnosed Injury or Illness” §1904.7(b)(7)
- Needlestick and Sharps Injuries §1904.8
- Medical Removal Cases §1904.9
- Hearing Loss Cases §1904.10
- Work-related Tuberculosis Cases §1904.11



## IX. Privacy Cases

- The employer must enter “privacy case” in lieu of the employee’s name on the OSHA 300 Log in the following situations:
  - An injury or illness to an intimate body part or reproductive system
  - An injury or illness resulting from sexual assault
  - Mental Illness
  - HIV infection, hepatitis, or tuberculosis
  - Needlestick injuries and cuts from sharp objects that are contaminated with another’s blood or other potentially infectious material
  - Other illnesses if the employee “independently and voluntarily” requests that his or her name not be entered on the Log. 1904.29(b)(6) and (7).
- The Privacy Case concept did not exist under the old rule.



## X. Work At Home

- **Work-related if the employee is working at home, including a home office, if:**
  - It occurs while the employee is performing work for pay or compensation in the home; and,
  - The injury or illness is directly related to the performance of work rather than to the general home environment or setting.
    - Example: Employee drops a box of documents on his or her foot - work-related.
    - Example: An employee's finger is punctured by a needle while sewing, work-related.
    - Example: An employee trips on the family dog or shocked because of faulty home wiring, not work-related. See §1904.5(b)(7).



## Injury / Illness Rates – The Big Caveat

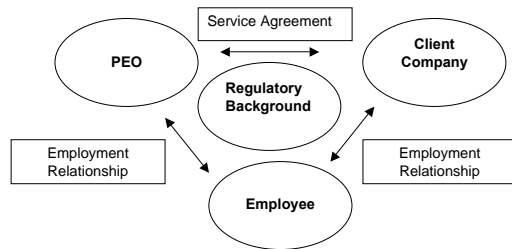
- 1998 – I/I rate of 6.7 cases per 100 FTEs.
  - **LWDII = 3.1**
- 1999 – I/I rate of 6.3 cases per 100 FTEs.
  - **LWDII = 3.0**
- 2000 – I/I rate of 6.1 cases per 100 FTEs.
  - **LWDII = 3.0**
- 2001 – I/I rate of 5.7 cases per 100 FTEs.
  - **LWDII = 2.8**
- 2002 – I/I rate of 5.3 cases per 100 FTEs.
  - **LWDII = 2.8 (new recordkeeping rules)**
- 2003 – I/I rate of 5.0 cases per 100 FTEs.
  - **LWDII = 2.6**
- 2004 – I/I rate of 4.8 cases per 100 FTEs.
  - **LWDII = 2.5**

Each year, these rates reflect the lowest levels since BLS began reporting data. <http://www.bls.gov/iif/oshwc/osh/os/osnr0023.txt> (Issued Nov. 17, 2005).





## The Growth of the Temporary Worker & Co-Employment



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## The Impact of Temporary Workers on Your Liability

- Occupational Safety & Health Act (Act), §652(5) Defining “Employer” Does Not Give a Bright Line Definition.
- The Determination of “Employer” or “Employee” status depends on assessing and weighing all incidents of the relationship with no one factor being decisive.

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## The Multi-Employer Worksite

Who is on first?

*Well, let's see, we have on the bags,*

*Who's on first, What's on second,*

*I Don't Know is on third...*



## The Multi-Employer Doctrine

The multi-employer worksite doctrine provides that a general contractor is well situated to obtain abatement of hazards either through its own resources or through its supervisory role with respect to its subcontractors.



### CPL 02-00-124 Multi-Employer Citation Policy

- **Creating Employer.** The creating employer is the employer that caused the hazard and may be cited even if the only employees exposed are those of other employer.
- **Exposing Employer.** The exposing employer is one whose own employees are exposed to the hazard. If the violation is created by another employer, the exposing employer may be cited if:
  - It knew of the hazardous condition or failed to discover it using reasonable diligence; and
  - Failed to take steps consistent with its authority to protect its employees such as requesting that the creating employer correct the hazardous condition or take measures to correct it.



### CPL 02-00-124 Multi-Employer Citation Policy

- **Correcting Employer.** The correcting employer is the one engaged in a common undertaking in the work site and must take reasonable care in detecting and correcting hazards in the work site.
- **Controlling Employer.** The controlling employer is one who has general supervisory authority over the work site including the power to correct health and safety violations itself or requiring others to do so. This measure of control by the controlling employer can be established by contract or by the exercise of control and practice.

*OSHA-A creating, correcting or controlling employer will often also be an exposing employer and can be a correcting employer as well. (Who's on first?)*



## Solutions

- Train all employees whether temporary or permanent.
- Maintain OSHA 300 logs for all employees including temporary or leased employees.
- Have contracts that clearly delineate what rights and responsibilities each party has.
- Determine whether you are an “employer” under the Act.
- Do not merely accept OSHA’s classification of your company as say a controlling employer without going through the analysis in *Loomis Cabinet*.



## Session 312

### An Employer’s Guide to Safety and Health Regulations in the Workplace

#### Pandemic Preparedness and Workplace Distractions

Preston M. Canzius



## What is the Bird-Flu?

1. **Bird-Flu is a contagious disease caused by the avian influenza viruses that normally affect mostly birds-but especially domestic birds like chickens, ducks and turkeys**
2. **Bird-Flu has the ability to go from birds to humans**
3. **Bird-Flu may mutate and spread from human to human**
4. **There is no pandemic at this time**

## Does My Company Need a Pandemic Plan

1. **Loss of 20% - 50% of work population**
2. **Loss of Services from key Suppliers and business partners**
3. **Loss of essential services**
  - a) Fire
  - b) Police
  - c) Health
  - d) Schools
4. **Loss of other services**
  - a) Travel
  - b) Transportation
  - c) Governmental Department
  - d) Retail Businesses



## What Should My Plan Address

- 1) **Corporate Governance**
- 2) **Prevention**
  - a) **Hygiene Programs**
  - b) **Education Programs**
- 3) **Responses**
  - a) **Contain/limits spread of infection**
  - b) **Provide supplies**
    - (i) **Surgical gloves and masks**
    - (ii) **Waterless hand washes**
    - (iii) **Antivirals for "essential" employees**
    - (iii) **Bird flu vaccines**

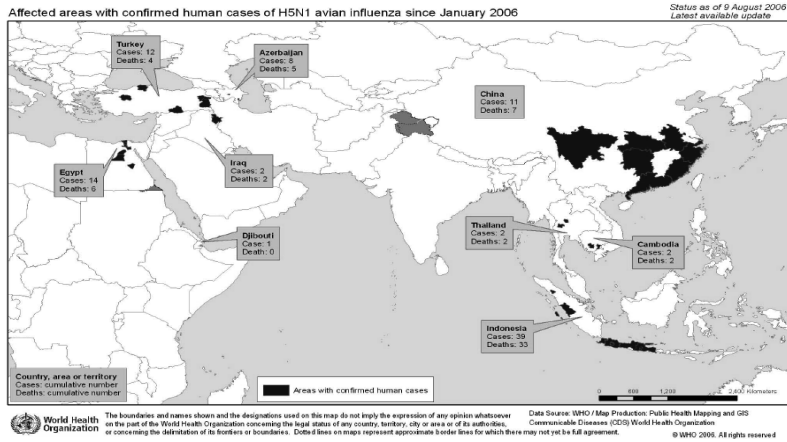


## What Should My Plan Address Cont'd

- 4) **Business Continuity Plan (s)**
  - a) **Address HR issues**
  - b) **Address essential employees**
- 5) **Communication**
  - a) **Establish company as a reliable source of information**
  - b) **Determine multiple method to communicate with employees**
  - c) **Keep up with CDC and WHO websites**
- 6) **OSHA and Homeland Security Issues**



## Where has Avian Flu-Spread



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## Bird Flu Fatalities Worldwide

COUNTRY	DATES	NO. OF CASES	NO. OF FATALITIES
Vietnam	1/17/04 – 10/29/05		~ 43
Thailand	1/24/04 – 3/12/06		~ 14
Cambodia	1/30/05 – 4/5/06		~ 6
Indonesia	5/19/05 – 7/30/06	58	~ 45
China	11/11/05 – 7/30/06	21	~ 14
Turkey	1/1/06 – 1/15/06		~ 4 (Clustered)
Iraq	1/17/06 – 1/27/06		~ 2 (Clustered)
Azerbaijan	2/23/06 – 3/10/06		~ 5
Egypt	3/17/06 – 5/18/06		~ 6

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## Tools

- 1) **Health and Human Services Business Pandemic Influenza Checklist (HHS checklist attached)**
- 2) **Homeland Security National Strategy**  
  
<http://www.dhs.gov/dhspublic/display?theme=45&content=5615&print=true>
- 3) **OSHA**  
[www.OSHA.gov/dsg/guidance/avian-flu.html](http://www.OSHA.gov/dsg/guidance/avian-flu.html)
- 4) **World Health Organization**  
[http://www.who.int/csr/disease/avian\\_influenza/en/index.html](http://www.who.int/csr/disease/avian_influenza/en/index.html)
- 5) **Center For Disease Control and Prevention**  
<http://www.pandemicflu.gov/> and
- 6) **State/Local Health Departments**  
[www.cdc.gov/international/relres.html](http://www.cdc.gov/international/relres.html)  
<http://www.metrokc.gov/health/prevcont/pandemic-flu.htm>

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## Driven To Distraction

- 1) **Cell phones**
- 2) **Laptop Computer Steering Wheel/ Dashboard Accessories**
- 3) **Dashboard DVD Player**

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## Cell Phones – is the Jury Really In?

1. Many employers prohibit driving while using a Cell phone
  - a. Chevron
  - b. School District
2. How would they know anyway?
  - a. Phone records
    - (i) Interrogatory and RFP
    - (ii) Website – Reverse phone directory  
[www.reversephonedirectory.com/](http://www.reversephonedirectory.com/)
  - b. Cameras on company property

## Cell Phones – is the Jury Really In?

3. Studies that support no Cell phone use while driving
  - a. Insurance information Institute  
[www.iii.org/hottopics/insurance/cellphones/](http://www.iii.org/hottopics/insurance/cellphones/)
  - b. Forbes magazine – Driving while on cell phone worse than driving while drunk  
[www.forbes.com/forbes/health/feeds/hscout/2006/06/29/hscout533489.html](http://www.forbes.com/forbes/health/feeds/hscout/2006/06/29/hscout533489.html)
  - c. NHTSA – 2005 Study attached



## Cell Phones – is the Jury Really In

4. Studies that show cell phones use is not the one number distraction
  - a. Virginia Commonwealth University  
[www.vcu.edu/uns/Released/2003/march/030703b.html](http://www.vcu.edu/uns/Released/2003/march/030703b.html)
  - b. AEI – booking joint center for regulatory studies  
[AEI-BrookingsACC-A2006.pdf](#)
  - c. CTIA - [www.ctia.org/industry\\_topics/topic.cfm/TID/17](http://www.ctia.org/industry_topics/topic.cfm/TID/17)  
and  
[www.ctia.org/industry\\_topics/content/index.cfm/AID/91](http://www.ctia.org/industry_topics/content/index.cfm/AID/91)

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## Laptop Computer Steering Wheel/ Dashboard Accessories Cont'd

### 1) Any Liability Issues?

- a) User
- b) Manufacturer
- c) Employer

### 2) Any Safety Issues?

### 3) Need to address in Policies?

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## Dashboard DVD Player

- a. Movies on the go!
- b. Driver Distraction?
- c. Should drivers be charged criminally For Fatal Accidents?  
 Dashboard DVD's and Death, A.P., (6/27/04)  
[www.wired.com/news/technology/1,64365-0.html](http://www.wired.com/news/technology/1,64365-0.html)

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## HHS Checklist

**BUSINESS PANDEMIC INFLUENZA PLANNING CHECKLIST**

In the event of pandemic influenza, business will play a key role in protecting employees' health and safety as well as limiting the negative impact to the economy and society. Planning for pandemic influenza is critical. To assist you in your efforts, the Department of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) have developed the following checklist for large businesses. It is essential to implement specific activities large businesses can do now to prepare, many of which will also help you in other emergencies. Further information can be found at <http://www.pandemicflu.gov/plan/business/>.


**1.1 Plan for the impact of a pandemic on your business**

Completed	In Progress	Not Started	Description
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Identify a pandemic coordinator and/or team with defined roles and responsibilities for preparedness and response planning. The planning process should include input from labor representatives.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Identify essential employees and other critical input (e.g. raw materials, suppliers, sub-contractor services/products), and logically segment to maintain business operations by location and function during a pandemic.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Train and prepare auxiliary workers (e.g. contractors, employees in other job sites/development centers). Develop and plan for scenario likely to result in an increase or decrease in demand for your products and/or services during a pandemic (e.g. effect of restrictions on mass gatherings, need for employee supplies).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Determine potential impact of a pandemic on company business functions using multiple possible scenarios that affect different product lines and/or production sites.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Determine potential impact of a pandemic on business-related geographic and international travel (e.g. quarantine, border closures).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Find up-to-date, reliable pandemic information from community public health, emergency management, and other sources and make it available to staff.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Establish an emergency communication plan and review periodically. This plan includes identification of key contacts (with back-ups), chain of command/alerts (including regional and customer), and processes for making and communicating business and employee status.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Implement an exercise/deliber to test your plan, and review periodically.

**1.2 Plan for the impact of a pandemic on your employees and customers**

Completed	In Progress	Not Started	Description
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Forecast and allow for employee absences during a pandemic due to factors such as personal illness, family member illness, community containment measures and quarantines, school and/or business closures, and public transportation closures.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Implement guidelines to modify the frequency and type of face-to-face contact (e.g. hand shaking, meeting in meetings, other layout, shared workstations) among employees and between employees and customers (refer to CDC recommendations).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Encourage and track annual influenza vaccination for employees.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Evaluate employee access to and availability of medical health and social services during a pandemic, and improve services as needed.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Evaluate employee access to and availability of mental health and social services during a pandemic, including corporate, community, and faith-based resources, and improve services as needed.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Identify employees and key customers with special needs, and incorporate the requirements of each person into your preparedness plan.

December 6, 2005  
Version 1.0



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HHS Checklist Cont'd

1.3 Establish policies to be implemented during a pandemic		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.4 Allocate resources to protect your employees and customers during a pandemic		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.5 Communicate to and educate your employees		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.6 Coordinate with external organizations and help your community		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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NHTSA – 2005 Study

**Driver Cell Phone Use in 2005 – Overall Results**

Driver cell phone use increased in 2005, with 6 percent of drivers on hand-held phones in 2005 nationwide compared to 5 percent in 2004. This result is from the National Occupant Protection Use Survey (NOPUS), which provides the only probability-based observational data on driver cell phone use in the United States. The NOPUS is conducted annually by the National Center for Statistics and Analysis of the National Highway Traffic Safety Administration (NHTSA).

The 2005 survey includes over 174,000 vehicles on the road at any given daylight moment being driven by someone on a hand-held phone. It also includes an estimated 32 percent of vehicles on the road at daylight moment where drivers are using some type of phone, whether hand-held or mobile. The 2005 survey also found the following:

- Hand-held use increased as a relative of driver category, including female drivers (from 6 percent in 2004 to 8 percent in 2005), drivers age 16-24 (from 2004 to 25 percent in 2005), and drivers in vehicles owned by persons in 2004 to 7 percent in 2005.
- The incidence of drivers speaking with handhelds on while driving also increased in 2005, from 14 percent of drivers in 2004 to 17 percent in 2005.
- In the first nationally probability-based estimate of the incidence of hand-held device misregulation, the survey found that 1.3 percent of drivers were talking on their, checking PDA's, or otherwise misregulating some hand-held device while driving in 2005.

**The Percent of Drivers Holding Phones to Their Ears**

Category	2004 (%)	2005 (%)
Nationwide	5%	6%
Males	4%	5%
Females	6%	8%
Age 16-24	8%	10%
Age 25-69	5%	6%
Age 70+	1%	1%

**Various Distraction Behaviors, 2004-2005**

Behavior	2004 (%)	2005 (%)
Drivers Holding Phones to Their Ears	5%	6%
Drivers Speaking with Handhelds On	0.4%	0.8%
Drivers Manipulating Hand-Held Devices	0.2%	0.2%

Sources: National Occupant Protection Use Survey, NHTSA's National Center for Statistics and Analysis, 2004-2005  
 NHTSA's National Center for Statistics and Analysis  
 800 Seventh Street SW Washington, DC 20006

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NHTSA – 2005 Study Cont'd

Motorist Group <sup>1</sup>	2004		2005		2004-2005 Change	Confidence in Change as % of Drivers Speaking with Headsets <sup>2</sup>
	% of Drivers Holding Phones to Ear <sup>3</sup>	Significantly High or Low Rate <sup>4</sup>	% of Drivers Holding Phones to Ear <sup>3</sup>	Significantly High or Low Rate <sup>4</sup>		
All Drivers	5%		5%		1	85%
Drivers Who Appear to Be						
Males	5%		5%		1	85%
Females	6%		6%		2	95%
Ages 16-24	8%	H	10%	L	2	93%
Ages 25-69	5%		4%		1	75%
Ages 70 and Up	1%	L	1%	L	0	10%
Drivers Who Appear to Be						
White	5%		6%		1	65%
Black	5%		6%		1	57%
Members of Other Races	2%	L	3%	L	3	97%
Drivers on						
Expressway Exit Ramps	6%		7%		1	74%
Surface Streets	5%		6%		1	75%
Drivers Travelling Through						
Light Precipitation	5%		6%		1	60%
Fog	6%		6%		NA	
Clear Weather Conditions	5%		5%		1	83%
Drivers of						
Passenger Cars	4%		5%		2	95%
Vans and SUVs	6%		7%		1	12%
Pickup Trucks	5%		5%		0	
Drivers in the						
Northeast	3%	L	4%	L	1	81%
Midwest	5%		6%		3	88%
South	6%		5%		1	83%
West	6%		8%		2	98%
Drivers in						
Urban Areas	7%		7%		0	47%
Suburban Areas	4%		3%		3	95%
Rural Areas	6%		3%		-3	90%
Drivers Travelling During						
Weekdays						
Rush Hours	5%		7%		2	95%
Nonrush Hours	3%		4%		1	15%
Weekends						
Rush Hours	3%		4%		1	94%
Nonrush Hours	3%		4%		1	94%
Drivers With <sup>5</sup>						
No Passengers	6%	H	8%	H	2	88%
At Least One Passenger	2%	L	2%	L	0	92%
Drivers With <sup>6</sup>						
No Passengers	6%		8%		2	89%
Passengers All Under Age 8	7%		6%		1	23%
Passengers All Ages 8 and Older	2%	L	0%	L	0	64%
Some Passengers Under Age 8 and Some Age 8 and Older	2%	L	0%	L	0	83%

<sup>1</sup>Percent of drivers holding phones to their ears is based on a 90% confidence interval of a 95% confidence interval between the levels of 1% and 10%.

<sup>2</sup>The number of drivers who responded to the survey is shown in their own right. Age, gender, and racial characteristics are based on the subjective assessments of the survey respondents.

<sup>3</sup>The highest number of "to-ear" or "to-ear" responses is shown in their own right. Age, gender, and racial characteristics are based on the subjective assessments of the survey respondents.

<sup>4</sup>The highest of statistical confidence that the 2005 rate is different from the 2004 rate.

<sup>5</sup>Among passengers observed in the right-hand seat and the second row of seats.

<sup>6</sup>Among passengers observed in the right-hand seat and the second row of seats.

NA: Data not sufficient to produce a reliable estimate.

Source: National Occupant Protection Use Survey, National Highway Traffic Safety Administration, National Center for Statistics and Analysis.



NHTSA – 2005 Study Cont'd

Motorist Group <sup>1</sup>	2004		2005		2004-2005 Change	Confidence in Change as % of Drivers Speaking with Headsets <sup>2</sup>
	% of Drivers Speaking with Headsets <sup>3</sup>	Significantly High or Low Rate <sup>4</sup>	% of Drivers Speaking with Headsets <sup>3</sup>	Significantly High or Low Rate <sup>4</sup>		
All Drivers	0.4%		0.7%		0.3	84%
Drivers Who Appear to Be						
Males	0.5%		0.7%		0.2	76%
Females	0.2%		0.2%		0	98%
Ages 16-24	0.8%		1.2%		0.5	49%
Ages 25-69	0.2%		0.4%		0.2	84%
Ages 70 and Up	NA		NA		NA	
Drivers Who Appear to Be						
White	0.3%		0.6%		0.3	57%
Black	0.2%		1.2%		0.5	41%
Members of Other Races	0.2%	L	0.2%	L	0.2	55%
Drivers on						
Expressway Exit Ramps	0.4%		0.9%		0.5	62%
Surface Streets	0.3%		0.6%		0.3	78%
Drivers Travelling Through						
Light Precipitation	0.3%	L	0.4%	L	0.3	73%
Fog	NA		NA		NA	
Clear Weather Conditions	0.4%	H	0.7%	NA	0.3	87%
Drivers of						
Passenger Cars	0.4%		0.7%		0.3	75%
Vans and SUVs	0.2%		1.2%		0.7	87%
Pickup Trucks	0.4%		0.3%		-0.1	45%
Drivers in the						
Northeast	0.6%		0.9%		0.3	17%
Midwest	0.2%		1.7%		1.5	98%
South	0.4%		0.4%	L	0.0	7%
West	0.3%		0.3%	L	0.0	39%
Drivers in						
Urban Areas	0.9%		0.9%		0.0	1%
Suburban Areas	0.3%		0.3%	L	0.2	88%
Rural Areas	0.4%		0.9%		0.5	28%
Drivers Travelling During						
Weekdays						
Rush Hours	0.4%		0.8%		0.4	91%
Nonrush Hours	0.2%		0.6%		0.2	47%
Weekends						
Rush Hours	0.2%		0.2%		0.0	52%
Drivers With <sup>5</sup>						
No Passengers	0.5%	H	0.4%	H	0.2	84%
At Least One Passenger	0.1%	L	0.4%	L	0.3	84%
Drivers With <sup>6</sup>						
No Passengers	0.5%		0.6%		0.3	84%
Passengers All Under Age 8	NA		1.2%		NA	
Passengers All Ages 8 and Older	0.2%	L	0.2%	L	0.2	65%
Some Passengers Under Age 8 and Some Age 8 and Older	NA		NA		NA	

<sup>1</sup>Percent of drivers speaking with headsets is based on a 90% confidence interval of a 95% confidence interval between the levels of 1% and 10%.

<sup>2</sup>The number of drivers who responded to the survey is shown in their own right. Age, gender, and racial characteristics are based on the subjective assessments of the survey respondents.

<sup>3</sup>The highest number of "to-ear" or "to-ear" responses is shown in their own right. Age, gender, and racial characteristics are based on the subjective assessments of the survey respondents.

<sup>4</sup>The highest of statistical confidence that the 2005 rate is different from the 2004 rate.

<sup>5</sup>Among passengers observed in the right-hand seat and the second row of seats.

<sup>6</sup>Among passengers observed in the right-hand seat and the second row of seats.

NA: Data not sufficient to produce a reliable estimate.

Source: National Occupant Protection Use Survey, National Highway Traffic Safety Administration, National Center for Statistics and Analysis.



## NHTSA – 2005 Study Cont'd

The Percent of Drivers Manipulating Hand-Held Devices, by Major Characteristics

Motorist Group <sup>1</sup>	% of Drivers Manipulating Hand-Held Device <sup>2</sup>	Z-Score <sup>3</sup>	
		Significantly High	or Low Rate <sup>4</sup>
All Drivers	3.2%		
Drivers Who Appear to Be	Male	0.2%	
	Female	0.2%	
Drivers Who Appear to Be	Ages 16-24	0.3%	
	Ages 25-69	0.3%	
	Ages 70 and Up	NA	
Drivers by	White	0.2%	L
	Black	0.3%	
Drivers on	Members of Other Races	0.2%	
	Expressway Exit Ramps	0.3%	
Drivers Traveled Through	Surface Streets	0.3%	
	Light Precipitation	0.3%	
Drivers in	Fog	NA	
	Clear Weather Conditions	0.3%	
Drivers in the	Passenger Cars	0.2%	
	Vans and SUVs	0.2%	
	Pickup Trucks	0.3%	
Drivers in	Northeast	0.3%	
	Midwest	0.2%	
	South	0.3%	
Drivers in	Urban Areas	0.3%	
	Suburban Areas	0.2%	
	Rural Areas	0.3%	
Drivers Traveling During	Weekdays	0.2%	
	Weekends	0.2%	
Drivers With <sup>5</sup>	Rush Hours	0.3%	L
	Nonrush Hours	0.2%	H
Drivers With <sup>5</sup>	No Passengers	0.2%	H
	At Least One Passenger	0.0%	L
Drivers With <sup>5</sup>	No Passengers	0.2%	H
	Passengers All Under Age 16	0.0%	L
Drivers With <sup>5</sup>	Passengers All Ages 16 and Older	NA	

<sup>1</sup>Percent of passenger vehicles observed or estimated of passenger vehicles stopped at a stop sign or straight through the lane of 8 a.m. and 6 p.m.  
<sup>2</sup>The percent of drivers who appeared to be manipulating devices types of cell phones, wireless e-mail devices, video games, or other devices. High percent, and high Z-score are statistically high; low percent, and low Z-score are statistically low; NA, not available.  
<sup>3</sup>Percent of drivers who appeared to be manipulating devices types of cell phones, wireless e-mail devices, video games, or other devices. High percent, and high Z-score are statistically high; low percent, and low Z-score are statistically low; NA, not available.  
<sup>4</sup>Drivers manipulating devices to the extent of a 10% confidence level.  
<sup>5</sup>Drivers manipulating devices to the extent of a 10% confidence level.



## NHTSA – 2005 Study Cont'd

### Survey Methodology

The National Center for Statistics and Analysis (NCSA) is the only probability-based observational survey of driver cell phone use in the United States. The survey observes usage in a variety of settings at a random selection of roadway sites, and provides the best working of the extent to which people in the country are using cell phones while driving.

The survey data collected by sending trained observers to probabilistically sampled intersections controlled by a stop sign or stoplight, where vehicles are observed from the roadside. Data is collected between the hours of 8 a.m. and 6 p.m. Only stopped vehicles are observed to permit time to collect the variety of information required by the survey, including subjective assessments of accident risk and rate. Observers collect data on the driver and observe the presence of a right front passenger and up to two passengers in the second row of seats. Observers do not determine accidents, as that is the NHTSA's primary responsibility. The 2005 NHTSA data collection between June 8 and June 23, while the 2004 data was collected between June 7 and July 11, 2004, including the period July 2-5.

Because the NHTSA sites were chosen through probability means, we can analyze the statistical significance of the results. Statistically significant increases in the use of hand-held phones (compared to baseline use or average use of hand-held devices between 2004 and 2005) are identified as the result of a hand-held use increase (expressway, shoulder, or the presence of drivers manipulating devices) by having a result that is 95 percent or greater in column 7 (expressway, high and low levels of hand-held use, shoulder use, or the manipulation of hand-held devices, such as the use of hand-held phones by drivers 70 and older than by younger drivers in SMS, are identified by FF and TL in column 3 and 5). Such comparisons are made within categories, such as road type, delineated by changes in use shading in the table. The exception to this is the grouping "Drivers Traveling During..." in which weekly use is compared to weekends, and weekly use is compared to weekends.

### Sites and Vehicles Observed

Numbers of	2004	2005	Percentage Change
	Site Observed	Vehicle Observed	
Site Observed	1,000	1,000	0%
Vehicle Observed	26,000	43,000	127%

The estimates of the numbers of drivers on phones and the percent of drivers using cell phones hand-held were derived via calculations that use data from the publication (Doyle and Vandenberg, in press) and (Simpson et al., 2002), and from the Department of Transportation's National Household Travel Survey. These calculations are explained in detail in the upcoming publication, "Driver Cell Phone Use in 2004 - Analysis," expected to be published in the spring of 2005.

The NHTSA uses a complex multi-stage probability sample, statistical data weighting, imputation of unknown values, and complex estimation and variance estimation procedures. For the NHTSA Technical Report referenced below for more information on these procedures.

Data collection, estimation, and variance estimation for the NHTSA are conducted by Wytas, Inc., under the direction of the National Center for Statistics and Analysis in NHTSA under Federal contract number (713822-03-D-2200).

### Definitions

Drivers were included as "holding phones in their cars" if they were holding to their cars what appeared to the observer to be a phone. In particular, drivers holding personal data assistants (PDAs) or mobile car phones to their cars might have been counted as holding a phone. They would have been counted if the PDA or car phone appeared to the observer to be some type of phone. Drivers need not have been speaking into the phone to be counted as using the phone.

Drivers were counted as "using a headset" if they appeared to have on their heads a device that had a microphone, and they appeared to be speaking. In some cases there might be no actual or visible attachment. A device identified as a headset need not have a microphone. If a phone is placed inside the car, but not held in the hand, and not on the ear, it is not considered as using a headset. If an observer did not see a driver using a headset, but there might have been, the observer, using video-recording systems on laptops carried on the car, need to be able to see, rather than speaking on cell phones. Observers did not attempt to distinguish these two behaviors because they cannot be reliably distinguished from the roadside.

Observers, drivers identified as using headsets might have been speaking to a passenger or themselves, rather than speaking into the headset.

Drivers were counted as "manipulating a hand-held device" if they appeared to be manipulating some type of electronic device, whether a cell phone, video game, or other device, such behavior as hand-held driving. This data is derived from the survey on "manipulating a hand-held device" might or might not have been speaking. If the driver was manipulating a phone while holding it to the car, the driver would have been categorized as "holding a phone to the car," rather than "manipulating a hand-held device."

We note that there are areas by which drivers can use (or even talk on) cell phones that would neither be recorded as holding a phone nor as using a headset nor as manipulating a hand-held device in the NHTSA. For instance, some phones have a push-to-talk feature, in which the driver pushes a button on the phone when they wish to speak and returns the button when they wish to hear the people on the other end of the line. In a speaking mode, but not on the cell phone. Additionally, some cell phones have built-in speakers by which drivers can converse on a phone hand-free. Drivers conversing on phones using either of these technologies would not appear to manipulate devices to be holding phones to their cars (assuming the push-to-talk users are not holding the phone to their car) and would not be speaking into the phone.

Neil Wasser  
Nwasser@Constangy.com  
404-230-6782

## Hey Neil, where can I find:

The OSHA Website Home page? <http://www.osha.gov> (Note the alphabetical index at the top of the Home page that can be used to search for various topics.)

How to Subscribe to OSHA's bi-weekly newsletter, Quick Takes? Enter your e-mail address on the space indicated on OSHA's Home page.

The OSHA Review Commission Home page? <http://www.oshrc.gov>

OSHA's web-based, e-tool interactive training materials on everything from battery manufacturing to nursing homes to electrical contractors?  
<http://www.osha.gov/dts/osta/oshasoft/index.html#eTools>

Other OSHA Compliance Assistance information?  
[http://www.osha.gov/dcsp/compliance\\_assistance/index.html](http://www.osha.gov/dcsp/compliance_assistance/index.html)

OSHA Inspection Data including the most frequently cited standards for my industry?  
<http://www.osha.gov/oshstats/index.html>

Neil, isn't there a link that can take us to Bureau of Labor Statistics workplace injury, illness and fatality statistics and information? <http://www.osha.gov/oshstats/index.html>

Okay, so where can I find all of the OSHA Standards?  
[http://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=STANDARDS&p\\_toc\\_level=0&p\\_keyvalue=](http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=0&p_keyvalue=)

All of the OSHA Compliance Directives?  
[http://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=DIRECTIVES&p\\_toc\\_level=0&p\\_keyvalue=](http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=DIRECTIVES&p_toc_level=0&p_keyvalue=)

All of OSHA's Interpretation Letters?  
[http://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=INTERPRETATION&p\\_toc\\_level=0&p\\_keyvalue=](http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=INTERPRETATION&p_toc_level=0&p_keyvalue=)

OSHA's Field Inspection Reference Manual (aka The Firm)?  
[http://www.osha.gov/Firm\\_oshaweb/Firm\\_toc\\_by\\_sect.html](http://www.osha.gov/Firm_oshaweb/Firm_toc_by_sect.html)

Information about the OSHA complaint process?  
<http://www.osha.gov/as/opa/worker/complain.html>

OSHA citations that were issued to my Company, or any company for that matter?  
<http://www.osha.gov/pls/imis/establishment.html>

The OSHA Recordkeeping Home page that you mentioned? (By the way Neil, I enjoyed the presentation today). <http://www.osha.gov/recordkeeping/index.html>



## NHTSA – 2005 Study

Incidents. If the driver were using both in speedbrakes, or were using push-to-call buttons with their hands out of the data collector's view, they would not be characterized as "impairing a hand-held device."

The overall categories "Black," "White," and "Other Races" appearing in the tables reflect subjective characterizations by roadside observers regarding the race of motorists. Licensee observers recorded the age group (0-24 years, 25-40 years, and 50 years or older) that best fit their visual assessment of each observed motorist.

"Regulatory cost ranges" are defined as the access made to roadways with limited access, while "traffic stream" comprises all other motorists. A roadway is defined as being "not used" if during the observation period the average speed of passenger vehicles that passed the observers exceeded 50 mph, with "medium speed traffic" defined as 31 - 50 mph and "slow traffic" defined as 30 mph or slower. A roadway is defined to have "heavy traffic" if the average number of vehicles per lane mile on the roadway during the observation period exceeded 45 vehicles per lane mile, with "moderately dense traffic" defined as 20 - 45 vehicles per lane per mile and "light traffic" having at most 20 vehicles per lane per mile.

Driver cell phone use is largely unrestricted by State laws. The States that use outright bans are New York, New Jersey, and the District of Columbia. Currently, these States and the District of Columbia ban the use of hand-held phone while driving. One of these States took effect in 2005 (New York), one in 2004 (New Jersey), and two (New Jersey and the District of Columbia) in 2003 (Connecticut). However, Connecticut's ban took effect in October, after the 2005 NHTSA study concluded. A small number of States otherwise restrict the manner of use, e.g., by requiring a call to be made using a push-to-call button or by requiring a call to be made using a push-to-call button or by requiring a call to be made using a push-to-call button or by requiring a call to be made using a push-to-call button. In addition, some States have hand-held bans or otherwise restrict use.

Existing vehicle safety features are even less restricted by State laws. No States or major cities have any outright ban with driver cell phone use, a small number of States restrict the manner of use, e.g., by requiring a call to be made using a push-to-call button or by requiring a call to be made using a push-to-call button or by requiring a call to be made using a push-to-call button. In addition, some States have hand-held bans or otherwise restrict use.

NHTSA's policy on using cell phones while driving is covered in the following statements from [www.nhtsa.gov](http://www.nhtsa.gov): "The primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Cell phone use can distract drivers from this task, making them less attentive and slower. Therefore, the safer course of action is to refrain from using a cell phone while driving." More information on the agency's policy can be found on this Web site.

**For More Information**  
For detailed analyses of the data in this publication, as well as additional data and information on the survey design and analysis procedures, see the upcoming publication, "Driver Cell Phone Use in 2005 - Analysis," expected to be available at the Web site [www.nhtsa.dot.gov/development](http://www.nhtsa.dot.gov/development) (NHTSA URL) later in the spring of 2006.

The NHTSA also observes other types of restraint, such as safety belts, child safety seats, and motorcycle helmets. This publication is part of a series that presents overall results from the survey on these topics. These are other members of the series, such as "Motorcycle Helmet Use in 2005 - Overall Results," and the corresponding NHTSA Technical Report "Motorcycle Helmet Use in 2004 - Analysis," for the latest data on these topics.

**References**  
Bopp, J., and Vandenberg, D., 2003 Motor Vehicle Occupant Safety Survey, Volume 4, Crash Injury and Emergency Medical Services Report, NHTSA Technical Report, 2003.

Federal Highway Administration, Nationwide Personal Transportation Survey, 1995, and National Household Travel Survey, 2001.

State, J., Haines, W., and Huang, H., Cell Phone Use While Driving: Results of a Statewide Survey, Transportation Research Board, Annual Meeting, CD 05-06, 2005.



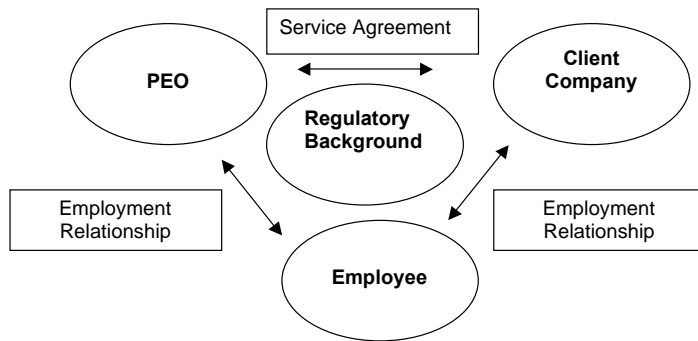
ACC's 2006 Annual Meeting: The Road to Effective Leadership

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**Temporary, Leased Employee & Multi-Employer Worksite in the Context of OSHA**

The Growth of the Temporary Worker & Co-Employment. The trend for increasing use of temporary workers began in the 1970's when tax laws allowed companies to maintain pension plans for management and key employees that differed from the remaining work force so long as those workers were leased.<sup>i</sup> Though this tax advantage was removed in 1982 by the Tax Equity and Fiscal Responsibility Act, the use of temporary workers by so called employee leasing companies expanded and evolved into organizations that handle many human resource functions and to what is now referred to as Professional Employee Organizations (PEO).<sup>ii</sup> Think of the PEO as an outsourced personnel department that for a fee of anywhere from 2% to 7% of payrolls manage hiring, workmen's compensation, unemployment claims, payroll taxes and health insurance.<sup>iii</sup> There are now over 700 PEOs employing thousands of employees.<sup>iv</sup> Particularly with respect to health and worker's compensation coverage, PEO have an advantage in bargaining power in that they can obtain insurance coverage at a lower rate.

As an example, the PEO can obtain worker's compensation coverage that would be prohibitive to a construction company because it aggregates employees from many different industries together which results in the lower risk participants in effect subsidizing the higher risk participants. The relationship between the PEO, client company and employee is referred to by the industry as "co-employment" because the PEO contractually assumes substantial employer rights and risks and staffing service agreements typically incorporate that term.



The co-employment relationship between the employee, the PEO and the client company is not only controlled by the service agreement (which typically states that the client company shall be responsible for all OSHA violations) but also by state and federal law.<sup>v</sup> In many states such as Florida, PEOs are licensed by the state and state law provides that the leased employee is given written notice of the contractual arrangement by the PEO which includes retaining the right to hire, terminate, discipline and reassign the leased employee while the PEO assumes responsibility for the payment of payroll taxes and wages without regard to payments by the client company.<sup>vi</sup> More significantly, according to F.S. §468.529(1), a licensed employee leasing company is the employer of the leased employee. However, the typical PEO agreement shifts most responsibility for compliance to the Client company which results in a "war of words" so to speak since the enabling statute may say that a temporary or leased worker is the employee of the PEO while the agreement actually shifts most of the responsibility to the Client company.

The Impact of Temporary Workers on Your Liability. As much as it may appear that the client company can "relax" since by operation of law it is not deemed to be the "employer," the reality is much different in light of the panoply of federal laws that can make the PEO, the client company or both liable. For example, under the Fair Labor Standards Act (FLSA) courts have developed a six part test as a prerequisite for determining whether or not a company hiring a PEO is liable under FLSA by determining if under the totality of the circumstances it demonstrated effective control of the terms and conditions of employment versus instructions that concern the performance of the subcontract.<sup>vii</sup> Similarly under the Family Leave Act the Ninth Circuit held that giving instructions regarding the performance of a contract does not make a general contractor an employer of the subcontractor's employees.<sup>viii</sup> If the party is deemed to be an "owner" rather than a contractor, this may also have a significant impact on the applicability of the Act. In Tanksley v. Alabama Gas Corp., 568 So. 2d 731 (Ala. 1990) the Court held that the gas company was acting as the owner rather than as a contractor and was not liable for the death and personal injuries of employees of the work site.<sup>ix</sup>

In the context of the Occupational Safety & Health Act (Act), §652(5) defining "employer", does not provide a bright line definition since it defines an employer as "a person engaged in a business affecting commerce who has employees" but does not include federal employees or employees of a state or political subdivision. Since the Act is not helpful in defining the term "employer" or "employee", according to the Supreme Court there is a presumption that Congress meant to use traditional agency law principles in determining who is an "employee."<sup>x</sup>

In applying the Court's ruling in Nationwide Mutual Insurance Co. v. Darden, 503 U.S. 318 (1992), the Ninth Circuit in Loomis Cabinet Company v. Occupational Safety & Health Review Commission, 20 F.3d 938 (9<sup>th</sup> Cir. 1994) held that there was no shorthand formula or magic phrase that gives you the answer as to whether or not a person was an employee, but instead it depends on assessing and weighing all incidents of the relationship with no one factor being decisive.<sup>xi</sup> Once you add the element of a multi-employer work site not only is there not a bright line, to the extent there is any line at all it is definitely very hazy and wavy.



Examples of how easily a temporary worker can turn into a permanent headache is exemplified by a case highlighted by OSHA on its web site where a subsidiary of a major waste hauler was fined \$84,500.00 after a temporary worker hired to work as a helper loading garbage into a truck on the job for just 30 minutes fell from a truck and was killed.<sup>xiii</sup> OSHA cited the company as a willful violation because according to it the parent company had been cited in other parts of the county for among other things failing to train temporary workers in safe work procedures.<sup>xiii</sup> This violation not only exemplifies the possible liability in hiring temporary workers and not training them adequately, but also that OSHA apparently is willing to ignore the corporate form when it cites a corporation.

#### The Multi-Employer Worksite: Who's on First?

In the classic baseball skit by Abbott and Costello, Abbott wants to make sure that he knows the names of everyone on the team and after informing Costello that he is the manager and coach of the mythical St. Louis Wolves baseball team, he proceeds to thoroughly confuse poor Costello as he tries to determine where all the players are located (*Well, let's see, we have on the bags, Who's on first, What's on second, I Don't Know is on third...*) In a multi-employer work site as in Abbott and Costello's skit, there is a multiplicity of players, a general contractor, subcontractors and materialmen who in turn may lease equipment and employees for parts of the job from outside vendors.

In response to the difficulties in determining responsibility for hazards in a multi-employer worksite, the Occupational Safety and Health Review Commission (OSHRC) in Grossman Steel & Aluminum Corp., 1976 WL 5968 (O.S.H.R.C.) enunciated the multi-employer worksite doctrine which provides that a general contractor is well situated to obtain abatement of hazards either through its own resources or through its supervisory role with respect to its subcontractors, the so called multi-employer worksite doctrine.<sup>xiv</sup> Although the multi-employer worksite doctrine has been recognized in a majority of circuits, the Fifth Circuit has been reluctant to embrace it.<sup>xv</sup> Even where the doctrine is well entrenched, employers on a multi-employer job site may be able to use the so called Anning-Johnson defense, named after Anning-Johnson Co. v. Occupational Safety and Health Review Commission, 516 F. 2d 1081 (7<sup>th</sup> Cir. 1975) with respect to nonserious violations. The Anning-Johnson defense stands for the proposition that subcontractors at a multiemployer construction site could not be given citations and could not be held liable for penalties under the Act for nonserious violations which their employees were exposed to but which they did not create or were responsible for under their contract.

This brings us back to Abbott & Costello's timeless skit. Perhaps as a response to the Anning-Johnson defense, this author has seen a trend in what I refer to as "Citation Inflation" or that most citations are now serious citations even if the facts supporting it make the probability of a serious injury highly speculative. For example, a recent violation the author was involved in concerns a citation for fall protection deemed serious by OSHA involving stipulated facts of an employee standing at least two feet from an

open manhole which was at subgrade (the manhole had a metal lip around it of about three to five inches and the height to the top of the manhole was anywhere from seven inches to one foot). The stipulated facts also include that the employee was there to guard against anyone falling in, that there was no way to secure a railing around the manhole to prevent someone from falling and that to the best of OSHA's knowledge no one has ever been cited for a similar violation. Consequently, under facts like this, you may be in the same situation as the hapless Costello when trying to figure out what exposure your company has to OSHA citations in the multi-employer worksite.

In an effort to clarify its multi-employer citation policy OSHA adopted directive CPL 02-00-124 titled Multi-Employer Citation Policy (Policy) with respect to work sites where more than one employer may be cited for a hazardous condition deemed to violate an OSHA standard.<sup>xvi</sup> In determining whether an employer will be cited in a multi-employer work site, OSHA will cite an employer when:

- *It is the "creating" employer.* The creating employer is the employer that caused the hazard and may be cited even if the only employees exposed are those of other employer.
- *It is the "exposing" employer.* The exposing employer is one whose own employees are exposed to the hazard. If the violation is created by another employer, the exposing employer may be cited if:
  - (1) It knew of the hazardous condition or failed to discover it using reasonable diligence; and
  - (2) Failed to take steps consistent with its authority to protect its employees such as requesting that the creating employer correct the hazardous condition or take measures to correct it.
- *It is a "correcting" employer.* The correcting employer is the one engaged in a common undertaking in the work site and must take reasonable care in detecting and correcting hazards in the work site.
- *It is the "controlling" employer.* The controlling employer is one who has general supervisory authority over the work site including the power to correct health and safety violations itself or requiring others to do so. This measure of control by the controlling employer can be established by contract or by the exercise of control and practice.

As the Policy points out, a creating, correcting or controlling employer will often also be an exposing employer and can be a correcting employer as well. Based upon the author's observations, OSHA has shown a willingness to cite employers for violations created by others even if they are both subcontractors in different crafts that had little contact with each other. In that regard, in view of the uncertainty surrounding who will be liable for citations concerning temporary or leased employees and the multi-employer work site, the most prudent course is for employers to do the following:

- (1) Train all employees whether temporary or permanent since there is a high likelihood that OSHA will treat the "controlling" employer to be responsible for training. This can present a problem since

there is frequent turnover in temporary employees. One possible solution suggested by OSHA in its response to a report by the Office of Inspector General of the Dept. of Labor is to "train the trainer" or to have employees connected with the controlling employer train each batch of temporary worker.<sup>xvii</sup> This includes compliance with OSHA's hazard communications standards.<sup>xviii</sup>

- (2) Maintain OSHA 300 logs for all employees including temporary or leased employees.<sup>xix</sup>
- (3) Have contracts that clearly delineate what rights and responsibilities each party has. In most cases a subcontract contains very specific instructions as to the scope of work but leaves the execution and the methods to up to the subcontractor. Therefore, the general contractor needs to make sure that its contract with respect to health and safety issues mirrors that reality rather than leaving the entire matter up in the air since the contract is one of the elements relied upon by OSHA in determining liability for a citation on a multi-employer work site.
- (4) Determine whether you are an "employer" under the Act. You may have a defense under *Loomis Cabinet*, *Darden* or cases holding that "owners" are not employers.
- (5) Do not merely accept OSHA's classification of your company as say a controlling employer without going through the analysis in *Loomis Cabinet*.

As Sgt. Phil Esterhaus (Michael Conrad from 1981 until his death in 1984) use to say in *Hill Street Blues* "Let's be careful out there."

<sup>i</sup> What a PEO Can Do For You by Bruce E. Katz, <http://www.aicpa.org/PUBS/jofa/jul1999/katz.htm> visited 4/26/2006

<sup>ii</sup> Id.

<sup>iii</sup> <[http://www.usatoday.com/money/smallbusiness/2006-04-18-health-costs-usat\\_x.htm](http://www.usatoday.com/money/smallbusiness/2006-04-18-health-costs-usat_x.htm)>, <http://bizjournals.com/tampabay/stories/2005/03/28/focus1.html>

<sup>iv</sup> Id.

<sup>v</sup> **Typical PEO Agreement**

#### Safety and Training.

It shall be the responsibility of Client to implement a safety and training program which meets the standards of regulations issued by the Florida Division of Safety, including the responsibility to implement a safety committee. PEO shall provide Client assistance in fulfilling these obligations. A Workplace Safety Committee fact sheet will be made available to Client upon request. Client is responsible for recording the safety committee meeting minutes and for maintaining these records for three years. Client shall submit quarterly to PEO written verification that the required meetings have been conducted and that the required documentation has been maintained. PEO shall

retain such responsibilities as are required by Chapter 468, Florida Statutes. Client agrees that it shall be responsible for any Florida Division of Safety citations and fines.

#### Safe Work Environment.

A. Client agrees that it will comply with all health and safety laws, right-to-know laws, regulations, ordinances, directives and rules imposed by controlling federal, state, and local government, and that it will immediately report all accidents and injuries to PEO. Client agrees to make "light-duty work" available in the event of light duty release. PEO reserves the right to locate a light duty release employee at another location within a 100-mile radius of the employee's residence. Failure by Client to adhere to this provision of the Florida Workers' Compensation Act could cause a fine to be assessed against Client in an amount not to exceed \$2,000.00 per violation.

B. PEO retains a right of direction and control over management of safety, risk and hazard control at the work-site or sites affecting its leased employees. Environmental factors, equipment, machinery and all other matters which affect employee health and safety shall be maintained in compliance with OSHA standards. Client represents that its working environment, equipment and machinery currently meet all OSHA standards and that they will be maintained in compliance with such standards for the duration of this Agreement. Client agrees that it shall be responsible for any OSHA violations.

C. Client shall provide or ensure use of all personal protection gear and/or equipment, as required by federal, state, or local law, regulation, ordinance, directive, or rule as deemed necessary by PEO or PEO's workers' compensation carrier. PEO will perform safety inspections of Client's equipment and premises to insure safe working conditions.

<sup>vi</sup> F.S. §468.525

<sup>vii</sup> *Zheng v. Liberty Apparel Co.*, 355 F. 3d 61 (2d Cir. 2003); *Quintanilla v. A&R Demolition, Inc.*, 2006 WL 568308 (S.D. Tex.)

<sup>viii</sup> *Moreau v. Air France*, 343 F.3d 1179 (9<sup>th</sup> Cir. 2003)

<sup>ix</sup> See *Cochran v. International Harvester Co.*, 408 F.Supp. 598 (W.D. Ky. 1975) (injured worker hired to install ductwork in a factory was not an employee); *Kane v. J.R. Simplot Co.* (worker hired to paint silo and building not an employee because he had complete discretion as to how he was to perform his work)

<sup>x</sup> *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318 (1992)

<sup>xi</sup> Id.

<sup>xii</sup> OSHA Fines Company \$84,500 Following Temp Worker's Death, <http://occupationalhazards.com/articles/5449>.

<sup>xiii</sup> Id.

<sup>xiv</sup> Id.

<sup>xv</sup> See: *Secretary of Labor v. Centex Construction Co.*, 1999 WL 89343 (O.S.H.R.C.A.L.J.) which gives a good overview of the multi-employer doctrine. The doctrine has met with success in *E&R Erectors, Inc. v. Secretary of Labor*, 107 F.3d (3<sup>rd</sup> Cir. 1997) (even where the general contractor and subcontractor all identified the effected employee as belonging to the subcontractor, the Court held that the evidence was "inconclusive" and cited the general contractor as well); *A/C Electric Co. v. Occupational Safety & Review Commission*, 956 F.2d 530 (6<sup>th</sup> Cir. 1991) but compare *Melerie v. Avondale Shipyards, Inc.*, 659 F.2d 706 (5<sup>th</sup> Cir. 1975) (in the Fifth Circuit the protected class protected by OSHA regulations comprises only employer's own employees).

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<sup>xvi</sup> Notably the Policy is not limited to the construction industry though in IBP v. Herman, 144 F.3d 861 (D.C. Cir. 1998), the Court expressed doubt that the doctrine was applicable outside of the construction industry.

<sup>xvii</sup> Report by the Office of Inspector General of the Dept. of Labor, Report No. 21-03-023-10-001.

<sup>xviii</sup> See 02/03/1994 Employers' responsibilities towards temporary employees Standard Number 1910.1200.

<sup>xix</sup> See 06/23/2003 Recording criteria for cases involving workers from a temporary help service, employee leasing service or personnel supply service.

## **312 An Employer's Guide to Safety & Health Regulations in the Workplace**

*Monday, October 23, 2006*

*4:30 PM. – 6:00 PM*

### **OSHA RECORDKEEPING TRAINING NARRATIVE**

Neil H. Wasser  
Chairman, Executive Committee  
Constangy, Brooks & Smith, LLC  
230 Peachtree Street, NW  
Atlanta, Georgia 30303  
404-525-8622  
nwasser@constangy.com

**OSHA INJURY AND ILLNESS RECORDKEEPING ANALYSIS**

**I. Introduction**

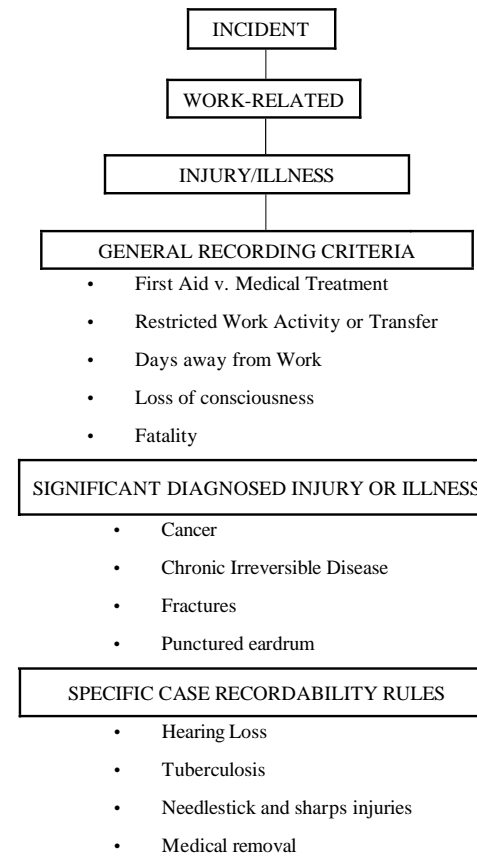
All covered employers are required by the Occupational Safety and Health Act of 1970 to prepare and maintain records of work-related injuries and illnesses. While employers have for many years been applying the rules set out in OSHA's Blue Book, beginning January 1, 2002, new recordkeeping rules have been in effect. This OSHA Injury and Illness Recordkeeping Training document provides you with a summary explanation of the new OSHA recordkeeping analysis.

**II. Distinguishing OSHA Recordkeeping Analysis From Workers' Compensation Analysis**

The most common mistake made by plant recordkeepers is that they often confuse OSHA recordkeeping analysis with workers' compensation analysis. It should be understood at the outset that as a general rule, the OSHA recordkeeping system is both broader and more detailed than the systems used to analyze workers' compensation cases. Some cases that are workers' compensation compensable will not be OSHA recordable. Conversely, some OSHA recordable cases will not be compensable under a state's workers' compensation system. And, recording a work-related case on the OSHA 300 Log does not mean that an employee is eligible for workers' compensation benefits. It is critical that the designated recordkeeper for each establishment keep clearly in mind that the analysis applied to OSHA recordkeeping cases is wholly separate and distinct from that applied to workers' compensation cases. The OSHA 300 Log should not simply be a list of workers' compensation cases.

**III. The Recordkeeping Analysis**

The following is a chart illustrating an overview of the recordkeeping analysis:



**A. An Incident**

The OSHA recordkeeping analysis begins with the occurrence of an incident (an event or exposure). Unlike workers' compensation procedures, it does not matter how long an employee waits after an incident occurs to report the incident. The general rule is that when an employee reports an incident, an employer should give the employee the benefit of the doubt unless the employer can prove that the incident did not occur or in good faith decides that the incident did not occur. In determining that an incident occurred, neither employee fault nor the preventability of the incident makes any difference. The only question at this point in the analysis is whether the employee reported that an incident occurred.

For recordkeeping purposes, the only incidents that the facility needs to be concerned with are those occurring to the company's employees, including part-time employees, temporary employees, or other employees whose work is supervised by the company. Thus, for example, the company is responsible, for recordkeeping purposes, for a temporary employee hired to perform a clerical function who has a work-related accident or who develops a musculoskeletal disorder, even if the temporary agency pays the individual's wages and is responsible for workers' compensation claims. The key point is that the company is responsible, for recordkeeping purposes, for incidents occurring to individuals whose day-to-day work activities are directed or supervised by the company. The company is not required to record incidents involving outside contractors whose employees are not supervised by the company, such as an electrician hired to repair equipment or a contractor who supplies and services vending machines.

**B. Work-Relatedness**

After an incident has been reported, the next question to ask is whether the incident is work-related. With few exceptions, work relatedness is defined much more broadly for OSHA recordkeeping purposes than under state workers' compensation laws. A case is work-related if an event or exposure at work either caused or contributed to the injury or illness, or significantly aggravated a pre-existing, non-work-related condition. Under OSHA recordkeeping analysis, there is a presumption that anything that occurs on the employer's premises is work-related. The employer's premises include not just the facility buildings, but also all of the employer's grounds, including the parking lot, and any other locations where employees are engaged in work-related activities or are present as a condition of employment.

There are nine exceptions to this presumption of work relatedness.

- 1) At the time of the injury or illness, the employee was present as a member of the general public rather than as an employee.
- 2) The signs or symptoms experienced by an employee merely surface at work, but result solely from a non-work related condition. For example, if an employee has an epileptic seizure at work that was not triggered by anything in the work-environment, the seizure and any injuries that may result during the seizure are considered non-work-related.
- 3) The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity. Under this exception injuries or illnesses that result from voluntary blood drives, flu shots, or exercise classes would be considered non-work-related.

- 4) The injury or illness results solely from an employee eating, drinking or preparing food for personal consumption. This means that if an employee chokes on a sandwich brought from home or bought at the company cafeteria, or if an employee burns his or her hand while drinking coffee at work, this case is not work-related. But, if the employer provides food or beverage to employees at a meeting and the employee gets food poisoning as a result, or if the food or drink was contaminated by a workplace contaminant like lead, the case is considered work-related.
- 5) The injury or illness results from an employee doing personal tasks unrelated to their employment on the company's premises outside of assigned working hours. If an employee comes to work early to use the company's conference room for a civic club meeting and is injured during the meeting, this would be considered to be non-work-related.
- 6) The injury or illness results solely from personal grooming, self medication for a non-work-related condition, or is intentionally self-inflicted. Personal grooming includes combing or drying hair, brushing teeth, clipping fingernails, or applying make-up. The self-medication exception is limited to taking medications for non-work-related conditions. For example, if an employee were taking a prescription medication for a personal condition and had an allergic reaction, this would be considered to be non-work-related. The intentional self-infliction exception is limited to acts in which an employee intends to harm himself or herself. Thus, if an employee punches a wall in

anger and breaks his hand, this is not covered by this exception, because although the employee intended to strike the wall, the employee did not intend to break his hand.

- 7) The injury or illness results solely from a motor vehicle accident in the company's parking lot or access road while an employee is commuting to or from work. This rule represents a narrowing of the former parking lot exception. Under the rule in effect prior to January 1, 2002, an injury or illness in a parking lot was not work-related unless work was being performed at the time of the accident. Under the new rule, parking lot injuries or illnesses, such as those resulting from slips or falls, are considered work-related, unless an employee was involved in a motor vehicle accident.
- 8) Common colds or the flu are not considered work related.
- 9) A mental illness is not considered to be work-related, unless an employee voluntarily provides an opinion from a licensed health care professional such as a psychologist or psychiatrist stating that the employee has a work-related mental illness. Depression or an anxiety disorder are mental illnesses. Stress is considered by OSHA to be a contributing factor to a mental illness, not a mental illness in and of itself.

If an incident occurs off the company's premises, work-relatedness is not presumed and must be established. The key here is determining whether the employee is engaged in activities in the interest of the company. If the employee is performing some job, task, or service for the company,

then work relationship has been established. For example, incidents that occur to a truck driver, if incurred during the performance of a task or service in the interest of the company, are work-related.

When employees travel on company business, they are considered to be engaged in work-related activities all the time they spend in the interest of the company, including travel to and from customer contacts and entertaining or being entertained for the purpose of transacting, discussing, or promoting business. OSHA regulations, including the recordkeeping rules, apply only within the United States and its territories, including in its air space. Incidents that occur while traveling on company business during normal living activities, such as eating, sleeping or recreation, are not considered work-related. Thus, when an employee checks into a hotel or motel, the employee has established a "home away from home." Once checked in, if the employee incurs an injury or illness, this is considered non-work-related, because the incident occurred during normal living activities.

Whether an aggravation of a pre-existing, non-work-related condition is work-related depends on whether the pre-existing condition has been "significantly aggravated." An injury or illness is considered to be a pre-existing condition only if it resulted from a non-work-related condition. These pre-existing, non-work-related conditions can be aggravated only if as a result of the workplace incident or exposure, the treatment of the condition is changed or increased. For example, if an employee was taking non-prescription medication for a pre-existing, non-work-related condition, and as a result of the work-related aggravation prescription medication is now recommended, this is considered "significant aggravation" and the case will be considered to be work-related. Similarly, if an employee were already taking prescription medication for the pre-existing, non-work-related condition, and as a result of the work-related incident or exposure the employee is assigned restricted

work activity, this "increase" in treatment is considered a "significant aggravation," which means the case will be considered to be work-related.

When a pre-existing condition is work-related, the analysis is different. If an employee has previously had a work-related injury or illness, for example, an injured back, future aggravations will not be considered a new, work-related case unless all of the signs and symptoms of the earlier case have resolved and disappeared. The new rules also specifically allow employers to defer to the opinion of a licensed health care professional in determining whether the aggravation is a new case.

**C. Injury or Illness**

After you have determined that there is an incident and that it is work-related, the next question is whether the incident is an injury or illness. This distinction is important now only because the OSHA 300 Log requires you to make this distinction in Columns (M)(1) and (6). Under the new rules, there is no longer any distinction in the recordability criteria that are applied to injuries and illnesses. The same general recording criteria (i.e., medical treatment, restricted work activity, days away from work, etc.) are now applied to both injuries and illnesses.

Injuries are caused by a *single, instantaneous event or exposure* or anything that occurs in the *time it takes to snap one's fingers*. Cases resulting from exposures of longer duration than instantaneous events or exposures are considered an illness. In making this distinction, you should focus on the originating or precipitating event or exposure. For example, if an employee hits his elbow on the edge of his work station, and is ultimately diagnosed as having bursitis, this incident would be characterized as an injury, because the originating or precipitating event was an instantaneous trauma. Similarly, if a foreign body such as lint gets in an employee's eye and the

employee develops conjunctivitis, this also constitutes an injury rather than an illness, because the precipitating event was the instantaneous incident of lint flying into the eye.

**D. General Recording Criteria**

An injury or illness is recordable only if it meets one of the following criteria:

- 1) medical treatment is rendered,
- 2) restricted work activity is imposed or an employee is transferred,
- 3) days away from work are incurred,
- 4) there is a loss of consciousness, *or*
- 5) a fatality results.

1. What is Medical Treatment?

The new recordkeeping rules list first aid treatments, identify a few treatments that are specifically considered to be medical treatment, and provide that any treatment that is not listed as a first aid treatment will be considered to be medical treatment.

The following are considered to be **FIRST AID TREATMENTS**:

- Visits to a LHCP solely for **observation or counseling**
- **Diagnostic procedures** such as x-rays, blood tests, eye drops to dilate pupils
- **Non-prescription medications.** But, non-prescription medications given at prescription strength are considered to be medical treatment.

The following dosages are considered to be prescription strength:

Ibuprofen (Advil) > 467 mg

Diphenhydramine (Benadryl) > 50 mg  
 Naproxen Sodium (Aleve) > 220 mg  
 Ketoprofen (Orudis KT) > 25 mg

- **Administering tetanus.** But, Hepatitis B vaccine is considered medical treatment.
- **Cleaning, flushing or soaking wounds** on the surface of the skin.
- Using wound coverings such as Band-Aids or gauze pads. **Butterfly bandages** and **steri-strips** are also considered first aid. Wound closing devices such as sutures, staples and surgical glue are considered medical treatment.
- Use of **hot or cold therapy**, including use of ice packs or hot compresses.
- Using **non-rigid means of support**, such as elastic wraps or non-rigid back supports. But, any device with rigid stays that is designed to immobilize a body part is considered to be medical treatment.
- Using **temporary immobilizing devices** while transporting an accident victim, such as neck collars and back boards.
- **Drilling a fingernail** or toenail to relieve pressure or to drain fluid from a blister.
- Using **eye patches.**
- **Removing foreign bodies from eye** using only irrigation or a cotton swab.
- **Removing splinters** or foreign materials from areas other than the eyes by irrigation, tweezers, cotton swabs, or other simple means.



- Using **finger guards**
- Using **massage**. But, **physical therapy** or **chiropractic treatment** are considered medical treatment.
- **Drinking fluids** for relief of heat stress. But, intravenous administration of fluids to treat heat stress is medical treatment.
- **Administering oxygen** as a purely precautionary measure. If, however, oxygen is given in response to symptoms, OSHA considers this to be medical treatment.

**ANY OTHER TREATMENT IS CONSIDERED TO BE MEDICAL TREATMENT.**

2. Restricted Work Activity

For OSHA recordkeeping purposes, restricted work activity occurs if an employee (1) is unable to perform any of the routine functions of the employee's regularly assigned job, (2) the employee cannot work the full workday the employee was scheduled to work, or (3) an employee is temporarily assigned to another job. An employee's routine functions are those work activities that the employee regularly performs at least once a week. The workday includes any overtime work assigned to an employee. Imposing a slower production or piece rate as part of the treatment or rehabilitation process does *not*, in itself, constitute restricted work activity.

In assessing whether an employee can perform all of the routine functions during the entire workday, time off during the workday to obtain medical treatment is not considered restricted work activity, unless the medical care provider indicates that the employee should be on restricted duty status. And, if the medical care provider directs the employee to return to work on restricted duty on a day following the date of injury or illness, but the employee personally decides not to report to

work because of the employee's medical condition, the case would still be recorded as a day of restricted work activity.

An OSHA-recordable case should always be recorded in the manner that best describes the severity of the case. In this case, the medical care provider, who is in the best position to assess the condition, has described the severity of the condition as requiring restricted work activity, not day(s) away from work. Under the new rules, whether a case involves restricted work activity ultimately depends on what a physician or other LHCP recommends, regardless of whether the employee follows the recommendation. If there are conflicting opinions from two or more LHCPs,<sup>1/</sup> the employer should base its recordkeeping decision on which recommendation is "most authoritative" (*i.e.*, best documented, best reasoned, or most familiar with facility work demands).

The inability to work overtime as a result of an employee's condition constitutes restricted work activity, to the extent that the employee was scheduled to work overtime or if the employee's recent work history demonstrated a pattern of volunteering to work overtime, because the employee cannot work the full workday that the employee was scheduled to work. Therefore, if an employee cannot work overtime, either as a result of company policy or because a licensed health care professional has recommended or directed such a status, each day that an employee cannot work overtime is a day of restricted work activity. Finally, as noted, imposing a slower production or piece rate does not, in itself, constitute restricted work activity. Although reducing piece rate would seem clearly to constitute a restriction, OSHA focuses solely on whether the employee is performing

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<sup>1/</sup>OSHA's Frequently Asked Question 7-10a provides that once medical treatment has been provided, or a day away from work or a day of restricted work has occurred, the case is recordable on that basis. In other words, an employer cannot rely on the conflicting opinion of a LHCP to undo the recommendation of medical treatment once it has already been given or undo a day away from work once it has already occurred.

all of the routine functions for the entire workday, not on whether those tasks are being performed more slowly.

### 3. Days Away From Work

If an employee is medically required to miss a full workday because of a work-related injury or illness, this lost day of work results in a recordable case. A day away from work case can only occur beginning the day after an incident, and must be dictated by medical personnel, not by the employee's personal choice to stay out of work.<sup>2/</sup> If an employee is on restricted work activity status, but no job can be found for the employee, any days that the employee spends away from work are recorded as days away from work.

### 4. Loss of Consciousness or Fatality

Loss of consciousness and fatality are self-explanatory. If an injury or illness results in either, the case is recordable.

## E. Significant Diagnosed Injury or Illness

Even if an injury or an illness is not recordable because none of the above General Recording Criteria apply, the case may still be recordable if it constitutes what OSHA calls a Significant Diagnosed Injury or Illness. Work-related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum are automatically recordable at the time the condition is diagnosed by a physician or other LHCP, even if no medical treatment is given, or even if no restricted work activity, or day(s) away from work result.

## F. Specific Case Recordability Rules

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<sup>2/</sup>If an employee incurs restricted duty or is out of work for the remainder of the shift on which the employee is first injured, the case is not recordable on that basis and is only recordable if one of the other general recording criteria, such as medical treatment, applies, or if the case is a "significant diagnosed injury or illness" or fits within one of the

### 1. Hearing Loss

Two determinations must be made before there is a recordable hearing loss. First, as a threshold matter, an employee's hearing level must be at 25 dB or more from audiometric zero (averaged at 2000, 3000, or 4000 Hz.) When audiometric testing is conducted, to create either an initial baseline audiogram or an annual audiogram, the audiometer itself is set at audiometric zero. The second determination that must be made is that once an employee's hearing level is at 25 dB or more from audiometric zero, a recordable case occurs if there is also a Standard Threshold Shift (an average of 10 dB or more at 2000, 3000 and 4000 Hz in either or both ears) from the baseline audiogram. When determining whether a Standard Threshold Shift has occurred, an employer may adjust the current audiogram to reflect the effects of aging on hearing.

Once there is a recordable case, the original baseline audiogram can be revised. Additional recordable hearing loss cases would occur thereafter whenever there are additional Standard Threshold Shifts from the revised baseline. And, if there are, the revised baseline can again be revised accordingly.

Hearing loss cases that meet the above criteria of at least 25 dB from audiometric zero and a Standard Threshold Shift must be recorded in Column (M)(5).

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specific recordability rules, such as for needlesticks or hearing loss.

### 2. Cases Involving OSHA Standards with Medical Removal Provisions

Some OSHA Standards, such as the Lead, Cadmium, Methylene Chloride, Formaldehyde and Benzene Standards, provide that at certain levels of exposure, employees must be removed from exposure to the chemical. When an employee is removed from his or her regular job as a result of such a medical removal provision, the case is automatically recordable in Column (M)(4), the column for "Poisoning" cases, and would be a case involving either days away from work (Column H) or days of restricted work activity (Column I).

### 3. Tuberculosis Cases

If an employee is exposed in the workplace to someone with a known case of tuberculosis, and the exposed employee subsequently develops a tuberculosis infection, evident either from a positive skin test or from a diagnosis by a physician or other licensed health care professional, the case is automatically recordable in Column (M)(3) as a "Respiratory Condition" case.

### 4. The Recording of Musculoskeletal Disorder Cases

When the Injury and Illness Recordkeeping Regulations first went into effect on January 1, 2002, the rules for recording MSDs were set forth separately in § 1904.12. Section 1904.12 was subsequently deleted on January 1, 2004.

MSDs are now recordable as an illness if the General Recording Criteria, discussed beginning at page 9 above, are met. The fact that a case has been formally diagnosed as a type of MSD, for example, tendinitis or carpal tunnel syndrome, does not mean that the case is automatically recordable. Instead, MSDs, whether diagnosed or whether an employee has a swollen wrist or other objective, physical finding like a positive Tinel's, Finklestein's or Phalen's test, is only recordable if

the employee receives medical treatment, is placed on restricted work activity status, is temporarily transferred or re-assigned, or incurs day(s) away from work.

Aside from the fact that diagnosis alone is no longer automatically recordable, the most significant differences under the new recordkeeping rules are that the use of hot or cold treatment on follow-up visits is no longer considered medical treatment, but giving non-prescription medications at prescription strength now *is* considered medical treatment. In addition, the so-called 30-day rule for establishing whether a new case exists no longer applies. Under the new rules, a new MSD case exists only if all of the signs or symptoms of the initial case have disappeared. When it is unclear whether a new case has developed, the best approach is to have a LHCP make the decision. An employer can defer to a LHCP's opinion about whether a new case exists or whether the signs or symptoms only reflect the recurrence of a prior case.

### 5. Needlestick and Sharps Injury Cases

Cases involving exposures to bloodborne pathogens require consideration of both the Injury and Illness Recordkeeping regulations and the Bloodborne Pathogens Standard.

Under the Injury and Illness Recordkeeping regulations, *all* work-related needlestick injuries and cuts from sharp objects that are *contaminated* with another person's blood or other potentially infectious material (OPIM) must be recorded on the OSHA 300 Log as an injury in Column (M)(1). Thus, for example, if an employee cuts himself while using a box cutter and a co-worker then cuts himself with the same box cutter contaminated with the first employee's blood, the case must be recorded as an injury on the OSHA 300 Log, even if there is no medical treatment given and there is no seroconversion.

If an employee is *splashed with or otherwise exposed* to the blood or OPIM of another person, the case is recordable as an injury on the OSHA 300 Log *only if* medical treatment is advised or there is a diagnosis of a bloodborne illness such as HIV, hepatitis B, or hepatitis C.

Under the provisions of Paragraph (h)(5) of the Bloodborne Pathogens Standard, § 1910.1030, an employer must maintain a Sharps Injury Log for bloodborne pathogens exposure incidents that result from *medical devices*. *The Sharps Injury Log is limited to injuries involving medical devices*. Medical devices include such devices as syringes, scalpels, or capillary tubes. This includes not just the intended use of such medical devices but also the manufacture of such devices. Cuts from non-medical devices, like box cutters, scissors or wire cutters, should be recorded only on the OSHA 300 Log, not on the Sharps Injury Log. Medical device-related cases that are recorded on the Sharps Injury Log must include the type and brand of medical device involved in the exposure incident.

Employers may use the OSHA 300 Log to satisfy the requirement in the Bloodborne Pathogens Standard to maintain a Sharps Injury Log. If an employer elects to use the OSHA 300 Log in lieu of a Sharps Injury Log, the list of medical device-related cases must be kept separate from all of the other types of cases recorded on the OSHA 300 Log. The easiest approach would be to maintain a separate page of the OSHA 300 that lists all of the Sharps Injury Log cases. As noted, each of these cases must identify the type and brand of the medical device involved.

All cases involving either contaminated needlestick injuries or contaminated cuts from sharp objects must be treated as privacy concern cases. For privacy concern cases, do not enter the employee's name, but instead enter "privacy case" in the space on the OSHA 300 Log where the employee's name is usually entered. In addition to needlestick injuries and cuts from sharp objects

that are contaminated with another person's blood or OPIM, the following cases must be treated as privacy concern cases: cases involving an intimate body part or the reproductive system, cases resulting from sexual assault, mental illnesses, and cases involving HIV, hepatitis, or tuberculosis, and other illnesses if an employee voluntarily requests that his or her name not be entered on the OSHA 300 Log. A separate, confidential list of the case numbers and the employee names for all of the privacy concern cases must be maintained.

Needlesticks, other sharps injuries, and splash cases are initially recorded as injuries, but if such cases are subsequently diagnosed as bloodborne diseases, the OSHA 300 Log must be updated to identify the case as an illness in Column (M)(6). In such cases, the initial identification of the cases as an injury in Column (M)(1) will be deleted and replaced with either a check or "x" mark in Column (M)(6), indicating an illness.

#### **IV. Completing the OSHA 300 Log and Supplementary Records**

Every recordable case must be entered on the OSHA 300 Log accurately within 7 calendar days after receiving information that a recordable case has occurred. Referring to the face of the OSHA 300 Log, Column (A) requires the entry of a non-duplicating Case Number. For example, the first case in 2005 might be recorded as 05-1, with succeeding cases 05-2, 05-3, etc. This non-duplicating number must also be placed on the corresponding Supplementary Record, the OSHA 301. For every case entered on the OSHA 300 Log, employers are required to generate either a federal OSHA 301 form or the state's workers' compensation First Report of Injury form, if the state workers' compensation form contains the same information as the OSHA 301 form, or is supplemented with such information. Whichever form is used, the non-duplicating number from Column (A) of the OSHA 300 Log should be written on the Supplementary Record.

The next entries are the Employee's Name in Column (B) and the employee's Job Title in Column (C). The employee's regular job title should be entered even if the injury or illness occurred while performing a different job.

The next entry is the Date of Injury or Onset of Illness in Column (D). The "Date of Injury" is not necessarily the date the incident is reported to the company or the date the employee had an initial appointment with a medical care provider, but instead the date that the incident occurred. The "Onset of Illness" is the date that the illness was first reported to the employer, unless the employee knows the specific date when the symptoms first occurred, in which case the date the symptoms first occurred should be used. See FAQ 29-5. If the employee lost time before the illness was reported, the first date that the employee incurred a day away from work is entered as the Onset of Illness date.

Column (E) asks the employer to describe "Where the event occurred." This entry should describe where the event occurred specifically, as opposed to simply identifying the department.

Column (F) requires an entry to be made describing the body part affected as well as a brief description of the object or substance that caused the injury or illness. The example given by OSHA is "Second degree burns on right forearm from acetylene torch."

Columns (G) through (J) describe the severity of the injury or illness by requiring the extent of the work-related incident to be indicated, in terms of "other recordable cases" (typically for medical treatment cases) (Column J), a case involving restricted work activity or transfer (Column I), a case involving days away from work (Column H), or a fatality (Column G). If the severity or extent of a case changes, the classification should be changed to reflect the most serious outcome. For example, if the case starts out as one involving medical treatment, a check should be placed in

Column (J). If it subsequently becomes one involving restricted work activity, the check in Column (J) should be replaced by a check in Column (I).

If the case involves days of restricted work activity or transfer, the number of restricted work activity days or days on transfer should be placed in Column (L). If the final number of restricted work activity days cannot be determined within the initial 7 calendar days when cases must be entered on the OSHA 300 Log, a good faith estimate of the number of restricted work activity days should be entered. When the case is resolved and the final number of restricted duty days is determined, the initial estimate should be replaced with the actual number. Similarly, if a case involves days away from work, the number of days away from work should be entered in Column (K). The total number of restricted work activity days and days away from work should not exceed 180. If a case involved 180 days away from work and then 60 days of restricted work activity, 180 should be entered in Column (K) and no entry need be made in Column (L), and a check mark would appear in Column (H) only. In such a case, it is also permissible to enter either 180 or 179 in Column (K) and a 1 in Column (L).

**V. Each Establishment Must Have Its Own OSHA 300 Log**

Each establishment must maintain its own OSHA 300 Log. An establishment is a single physical location where business is conducted or where services or industrial operations are performed. The work-related injuries and illnesses of employees who regularly commute to such an establishment must be recorded on the OSHA 300 Log for that establishment. For employees who do not work at any particular establishment, an employer may simply link or assign each of these employees to a particular establishment for the sole purpose of recording injuries or illnesses. For example, assuming that field sales employees work out of their homes and do not regularly commute

to a fixed location, the field sales employees' work-related injuries and illnesses can be recorded either (a) on the OSHA 300 for their company at a regional sales office, (b) on the OSHA 300 Log for their company's corporate headquarters office, or (c) on the Log of any of the operating company's manufacturing facilities. Whichever choice is made, the company must maintain this link to a particular location for the entire calendar year, and then after that calendar year could decide to link such an employee to another location or facility for that calendar year.

**VI. Miscellaneous Rules for Recording Restricted Work Activity And Days Away From Work Cases**

If an injury or illness case involves restricted work activity or days away from work that extend beyond the end of a calendar year, a good faith estimate of the total number of such days should be made at the end of the calendar year and that estimate should be used for the annual totals that are posted from February 1 through April 30.<sup>3/</sup> When the case is resolved or closed, the final number of restricted work activity and/or days away from work should be entered for the individual case on last year's OSHA 300 Log. There is no requirement in such cases to update the year-end totals or the OSHA 300-A Form. The same injury or illness case should only appear on the OSHA 300 Log for the year in which the injury or illness occurred.

The count of restricted work activity days, regardless of whether the case involves an injury or an illness, ceases once a permanent restriction is imposed. In effect, the employee's job has been permanently re-defined to exclude the restricted activities.

In calculating the number of restricted work activity days or days away from work, you should count all calendar days. Thus, even if an employee had already scheduled vacation before an

<sup>3/</sup>Form 300-A, the annual summary of the OSHA 300 Log, must be posted from February 1 through April 30 each year.

injury or illness occurred, the previously scheduled vacation days would still be counted as restricted work activity days or days away from work, if that is the information you receive from a physician or other LHCP.

If an employee's employment is terminated *for reasons other than a work-related injury or illness, such as for insubordination*, the number of restricted work activity days or days away from work ceases with the date of the termination. If, however, the termination results from the injury or illness, the count of such days continues.

**VII. Capturing Relevant Data**

As the above explanation of the recordkeeping analysis reveals, it is critical that a system be in place at each facility to ensure that the designated recordkeeper receives sufficient information about each incident to properly apply the OSHA recordkeeping analysis. Particular attention should be paid to off-shifts where information is not always readily and accurately communicated to the day shift.

To apply the recordkeeping analysis the designated recordkeeper must know:

1. What happened to the employee.
2. How the incident occurred.
3. Where the employee was when the incident occurred.
4. Whether the employee lost consciousness.
5. What treatments and/or medications were provided to the employee.
6. Whether the employee incurred any days away from work.
7. Whether the employee incurred any restricted work activity days, imposed by either medical personnel or supervisory personnel.

8. Was the employee's condition diagnosed.

Preferably, forms should be developed that will capture this information. They must be forwarded to the designated recordkeeper so that there is sufficient time to make an OSHA recordability determination within 7 calendar days after the company has received information that a recordable case has occurred.

**VIII. Access to OSHA 300 Log**

OSHA regulations provide that upon request, any employee, former employee, or their representative, shall have access to the OSHA 300 log for any establishment in which the employee has been employed by the end of the next business day after the request. If OSHA requests the OSHA 300 Log, a copy must be provided within 4 business hours. If the 301 Form is requested by an employee, a former employee, or a personal representative, a copy must be provided by the end of the next business day. If a union requests 301 Forms, only the right hand side of the form, titled "Information about the case" need be provided, within 7 calendar days.

**Reporting Requirements for Work-related Fatalities and Multiple Hospitalizations**

In the event of a work-related fatality or hospitalization of one or more employees, **immediately notify Company's HES.**

**FEDERAL REQUIREMENTS – OSHA 29 CFR 1904.8**

Company's Reporting Requirements for FATALITY	Company's Reporting Requirements for HOSPITALIZATION	Additional Information
<p>Within <b>8 hours</b> after the death of an employee, HES or Legal shall report the incident by phone or in person to the nearest OSHA Area Office or to 1-800-321-OSHA.</p> <p>This requirement applies to each fatality <u>occurring within 30 days</u> of the incident.</p> <p>If Company does not learn of the reportable incident when it occurs, HES shall report the incident within 8 hours after it is reported to any Company employee or agent.</p>	<p>Within <b>8 hours</b> after the hospitalization of <b>3 or more</b> employees, HES or Legal shall report the incident by phone or in person to the nearest OSHA Area Office or to 800-321-OSHA.</p> <p>This requirement applies to each hospitalization of three or more employees <u>occurring within 30 days</u> of the incident.</p> <p>If Company does not learn of the reportable incident when it occurs, HES shall report the incident within 8 hours after it is reported to any Company employee or agent.</p>	<p>Have the following ready before you report an incident to HES, or the Hotline:</p> <p>Location Name                      Location of Incident                      Time of Incident                      Number of Fatalities or Hospitalized Employees                      Contact Person and Phone Number                      Brief Description of Incident.                      SSN or DOB of impacted employee.                      Home address and/or phone number of impacted employees.                      Name(s) of deceased or injured employee(s).</p>

**State Reporting Requirements**

**ALABAMA**

- HES shall comply with federal reporting requirements.
- OSHA Area Offices: Birmingham (205) 731-1534; Mobile (251) 441-6131.

**ALASKA (STATE PLAN, AS §18.60.058)**

- HES shall comply with federal reporting requirements for work-related fatalities, **AND**
- Within **8 hours** after the hospitalization of **one or more** employees, HES shall report the incident to the nearest division of labor office or OSHA 800 number AK Dept. of Labor offices: Anchorage (907) 465-2700; Fairbanks (907) 41-2888; Kenai (907) 283-7206; Ketchikan (907) 225-5418; OSHA Area Office: Anchorage (907) 271-5152

**AMERICAN SAMOA**

- HES shall comply with federal reporting requirements. OSHA Regional Office: (415) 975-4310.

**ARIZONA (STATE PLAN, AAC R20-5-637)**

- HES shall report **any work-related death** to the Industrial Commission **immediately and shall submit written notice within eight hours.**
- HES shall comply with federal reporting requirements for employee hospitalization.
- Industrial Commission of Arizona: (602) 542-5795; OSHA Area Office: Phoenix (602) 640-2007

**ARKANSAS**

- HES shall comply with federal reporting requirements.
- OSHA Area Office: Little Rock (501) 324-6291

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**CALIFORNIA (STATE PLAN, 8 CCR §342)**

HES shall report **any work-related death or any work-related serious injury or illness of an employee immediately** to the nearest DOSH District Office [See **Att. 1**], but not longer than 8 hours after COMPANY knows or with diligent inquiry would have known of the death or serious work related injury or illness. If exigent circumstances can be demonstrated, the incident may be reported no longer than 24 hours later.

- Cal. Dept. of Industrial Relations: (415) 703-5100; Regional state offices: Anaheim (714) 939-8611; Santa Rosa (707) 576-2419; Sacramento (916) 263-2803; Van Nuys (818) 901-5730.

Note: **If you have zip code of location, search @ Cal/OSHA Enforcement Unit District Office for nearest District Office.**

**COLORADO**

- HES shall comply with federal reporting requirements. OSHA Area Offices: Denver (303) 844-5285; Englewood (303) 843-4500

**CONNECTICUT (STATE PLAN, CAR § 31-374-9A)**

- HES shall comply with federal reporting requirements CT Dept. of Labor: (860) 566-5123; OSHA Area Offices: Bridgeport (203) 579-5581; Hartford (860) 240-3152.

**DELAWARE**

- HES shall comply with federal reporting requirements. OSHA Area Office: Wilmington (302) 573-6115.

**DISTRICT OF COLUMBIA (D.C. CODE § 36-1213)**

- HES shall notify the Mayor within 24 hours of an accident or occurrence that causes the death of an employee or that causes **a life threatening injury requiring the hospitalization of one employee.**
- Mayor's office: (202) 727-2980; OSHA Area Office: (202) 523-1452.

**FLORIDA**

- HES shall comply with federal reporting requirements.
- OSHA Area Offices: Ft. Lauderdale (954) 424-0242; Jacksonville (904) 232-1294; Tampa (813) 626-1177.

**GEORGIA**

- HES shall comply with federal reporting requirements OSHA Area Offices: Atlanta East (770) 493-6644; Atlanta West (770) 984-8700; Savannah (912) 652-4393

**GUAM**

- HES shall comply with federal reporting requirements
- OSHA Regional Office: (415) 975-4310

**HAWAII (STATE PLAN, HAR § 12-52-8) (HIOSH)**

HES shall comply with federal reporting requirements **AND** Report all accidents involving **property damage in excess of \$25,000 within 8 hrs**

- HI Dept. of Labor: (808) 586-8844; OSHA Area Office: Honolulu (808) 541-2685
- Accident Report Hotline (808) 586-9102

**IDAHO**

- HES shall comply with federal reporting requirements.
- OSHA Area office: Boise (208) 321-2960.

**ILLINOIS**

- HES shall comply with federal reporting requirements (Ill. Admin. Code 56, § 350.210)
- OSHA Area Offices: Calumet City (708) 891-3800; Chicago (847) 803-4800; Fairview Hts. (618) 632-8612; N. Aurora (630) 896-8700; Peoria (309) 671-7033

**INDIANA (STATE PLAN, 610 IAC 4-4-8)**

- Within **forty-eight (48) hours** after a work-related accident which is fatal to **one or more employees** or results in hospitalization of **five (5) or more employees**, HES shall report the accident to the Indiana Division of Labor

- Indiana Dept. of Labor: (317)232-2378; (317) 232-2655
- OSHA Area Office: Indianapolis (317) 226-7290

**IOWA (STATE PLAN IAB 875-4-8688)**

HES shall comply with federal reporting requirements Iowa Div. of Labor Services: (515) 242-5870; OSHA Area Office: Des Moines (515) 284-4794

**KANSAS**

- HES shall comply with federal reporting requirements. OSHA Area Offices: Wichita (316) 269-6644

**KENTUCKY (STATE PLAN)**

- HES shall comply with federal reporting requirements. Kentucky Labor Cabinet: (502) 564-3070; OSHA Area Office: Frankfurt (502) 227-7024.

**LOUISIANA**

- HES shall comply with federal reporting requirements OSHA Area Office: Baton Rouge (225) 298-5458

**MAINE**

- HES shall comply with federal reporting requirements.
- OSHA Area Offices: Augusta (207) 626-9160; Bangor (207) 941-8177

**MARYLAND (STATE PLAN, CODE ANN §5-702)**

- HES shall comply with federal reporting requirements MD Div. of Labor & Industry: (410) 767-2999 and (410) 767-2241 OSHA Area Office: Baltimore (410) 865-2055/2056

**MASSACHUSETTS**

- HES shall comply with federal reporting requirements.
- OSHA Area Offices: North Boston (617) 565-8110; South Boston (617) 565-6924; Springfield (413) 785-0123

**MICHIGAN (STATE PLAN, MSA § 17.50(61))**

HES shall comply with federal reporting requirements Michigan Dept. of Consumer & Industry Services: (517) 322-1814; OSHA Area Office: Lansing (517) 327-0906 Michigan Dept. of Labor & Economic Growth (517) 322-1814

**MINNESOTA (STATE PLAN, MINN. R.****5210.0680)**

- HES shall comply with federal reporting requirements Minnesota Dept. of Labor & Industry: (651) 286-5050; OSHA Area Office: Minneapolis (612) 664-5460

**MISSISSIPPI**

- HES shall comply with federal reporting requirements. OSHA Area Office: Jackson (601) 965-4606

**MISSOURI**

- HES shall comply with federal reporting requirements. OSHA Area Offices: Kansas City (816) 483-9531; St. Louis (314) 425-4249

**MONTANA**

- HES shall comply with federal reporting requirements. OSHA Area Office: Billings (406) 247-7494

**NEBRASKA**

**Within 24 hours of an accident causing major damage or personal injury requiring medical attention**, HES shall notify the Department in writing (230 NAC 4).

For accidents involving elevators, neither the elevator nor any parts thereof shall be removed before written permission has been given by the Department, except for the purpose of saving human life and eliminating consequential damages.

OSHA Area Office: Omaha (402) 221-3182.



**NEVADA (STATE PLAN, NRS §618.378, §618.379)**

- HES shall comply with federal reporting requirements. **Any equipment** involved in an accident which is fatal to one or more employees or hospitalization of three or more employees **may not be removed or dismantled** until the division has investigated the accident and has authorized the removal.
- When a division investigator arrives at the accident site, the immediate supervisor of any injured employee and any employee who witnessed the accident may be interviewed by the investigator.
- NV Div. of Industrial Relations: (775) 684-7260; OSHA Area Office: Carson City (775) 687-5240
- Las Vegas (702) 486-9020.

**NEW HAMPSHIRE**

HES shall comply with federal reporting requirements (N.H.A.R., Lab 1403.04).  
State: (603) 271-6297; OSHA Area Office: Concord (603) 225-1629

**NEW JERSEY (N.J.A.C. 12:110-5.8).**

- HES shall comply with federal requirements for reporting fatalities, **AND**
- Every in-patient hospitalization** shall be reported, orally and in writing, within eight (8) hours of occurrence to the Commissioner of Labor or his or her designee.

NJ Dept. of Labor: (609) 292-2975; OSHA Area Office: Avenel (732) 750-3270; Hasbrouck Hts. Commissioner (201) 288-1700; Malton (856) 757-5181; Parsippany (973) 263-1003

**NEW MEXICO (STATE PLAN)**

Comply with federal reporting requirement.  
NM Environment Dept.: (505) 827-2850; OSHA Area Office: Albuquerque (505) 248-5302

**NEW YORK (STATE PLAN, 12 NYCRR 801.9)**

HES shall comply with federal requirements for reporting fatalities. For the inpatient hospitalization of **two or more employees**, HES shall report the accident to the nearest NY Dept. of Labor office within eight (8) hours.

NY Dept. of Labor: (518) 457-2741; OSHA Area Offices: Albany (518) 464-4338; Bayside (718) 279-9060; Buffalo (716) 684-3891; L. I. (516) 334-3344; Manhattan (212) 466-2482; Syracuse (315) 451-0808; Tarrytown (914) 524-7510

**NORTH CAROLINA (STATE PLAN)**

HES shall comply with federal reporting requirements NC Dept. of Labor: (919) 807-2900; OSHA Area Office: Raleigh (919) 856-4770.

**NORTH DAKOTA**

HES shall comply with federal reporting requirements

- OSHA Area Office: Bismarck (701) 250-4521

**OHIO**

HES shall comply with federal requirements for reporting fatalities and hospitalizations (O.A.C. 4167-6-10). In addition, the state shall require COMPANY to obtain detailed information **within ten days** of the incident including causes or factors; test results; measurements; witness statements; follow-up actions; and evaluations of work processes.  
OSHA Area Offices: Cincinnati (513) 841-4132; Cleveland (216) 522-3818; Columbus (614) 469-5582; Toledo (419) 259-7542

**OKLAHOMA**

HES shall comply with federal reporting requirements.  
OSHA Area Office: Oklahoma City (405) 278-9560.

**OREGON (STATE PLAN, OAR 437-001-0052)**

HES shall comply with federal requirements for reporting fatalities. HES shall inform Oregon OSHA of all accidents or injuries resulting in a hospital admission of **one or more employees within 24 hours** after COMPANY receives notification.  
COMPANY must not disturb the scene of a fatality or multiple hospitalization accident, except for the rescue of injured employees, until authorized by OR-OSHA or state law enforcement.

- Oregon OSHA: (503) 378-3272; OSHA Area Office: Portland (503) 326-2251

**PENNSYLVANIA**

- HES shall comply with federal reporting requirements.  
OSHA Area Offices: Allentown (610) 776-0592; Erie (814) 833-5758; Harrisburg (717) 782-3902; Philadelphia (215) 597-4955; Pittsburgh (412) 395-4903; Wilkes-Barre 570.826.6536

**PUERTO RICO (STATE PLAN, 29 L.P.R.A. § 361(G))**

HES shall comply with federal reporting requirements Dept. of Labor: (787) 754-2119; OSHA Area Office: Guaynabo (787) 277-1560

**RHODE ISLAND**

HES shall comply with federal reporting requirements.  
OSHA Area Office: Providence (401) 528-4669.

**SOUTH CAROLINA (STATE PLAN, S.C. C.R. § 71-308)**

HES shall comply with federal reporting requirements SC Dept. of Labor: (803) 896-4300; OSHA Area Office: Columbia (803) 765-5904

**SOUTH DAKOTA**

HES shall comply with federal reporting requirements.  
OSHA Regional Office: (303) 844-1600.

**TENNESSEE (STATE PLAN, TAC §50-3-701)**

Tenn. Dept. of Labor: (615) 741-2793; OSHA Area Office: Nashville (615) 781-5423

**TEXAS**

HES shall comply with federal reporting requirements. **AND Within 48 hours** after an employee accident that directly or indirectly involves chemical exposure or that involves asphyxiation, and that is fatal to one or more

employees or results in the hospitalization of **five or more employees**, HES shall report the accident to the department (Tex. Health & Safety Code § 502.012).  
OSHA Area Offices: Austin (512) 916-5783; Corpus Christi (361) 888-3420; Dallas (214) 320-2400; El Paso (915) 534-6251; Fort Worth (817) 428-2470; Houston North (281) 591-2438; Houston South (281) 286-0583; Lubbock (806) 472-7681.

**UTAH (STATE PLAN, UR 614-1-5)**

**Within 12 hours of any** fatalities or work-related disabling, serious, or significant injury and of any occupational disease incident, HES shall notify the Utah Div. of Occupational Safety and Health.  
Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor Commission.  
UT Labor Commission: (801) 530-6901; OSHA Area Office: Salt Lake City (801) 233-4900

**VERMONT (STATE PLAN).**

HES shall comply with federal reporting requirements VT Dept. of Labor & Industry: (802) 828-5098; OSHA Area Office: (802) 828-2765.

**VIRGINIA (STATE PLAN, VCA § 40.1-51.1)**

COMPANY comply with federal reporting.  
OSHA Area Office: Norfolk (757) 441-3820.  
Virginia Dept. of Labor & Industry (806) 786-2377

**VIRGIN ISLANDS**

HES shall comply with federal reporting requirements. VI: Dept of Labor (340) 773-1996; OSHA Office: (212) 337-2378.

**WASHINGTON (STATE PLAN)**

HES shall comply with federal requirements for reporting fatalities (WAC 296-24-020, 296-27-090). **AND** Within eight (8) hours or the inpatient hospitalization of **two or more employees** as a result of a work-related incident, HES shall orally report the incident to the nearest state office or the OSHA hotline.

- Equipment involved in an incident shall not be removed, except for the rescue of injured employees, until a department representative investigates and authorizes removal.
- Following an accident causing a fatality or serious injuries, HES shall ensure that a preliminary investigation of the cause of the accident has been conducted. The immediate supervisor of the injured employee, witnesses, and employee representatives shall be interviewed.
- WA Dept. of Labor and Industries: (360) 902-4200; OSHA Area Office: Bellevue (206) 553-7520

**WEST VIRGINIA**

- HES shall comply with federal reporting requirements.
- OSHA Area Office: Charleston (304) 347-5937.

**WISCONSIN**

- HES shall comply with federal reporting requirements.
- OSHA Area Offices: Appleton (920) 734-4521; Eau Claire (715) 832-9019; Madison (608) 441-5388; Milwaukee (414) 297-3315

**WYOMING (STATE PLAN, WCWR 025-122-006 § 4)**

- HES shall comply with federal reporting requirements.
- WY. Dept. of Employment: (307) 777-7786; OSHA Regional Office: (303) 844-1600



December 2005

DOT HS 809 967

**Driver Cell Phone Use in 2005 — Overall Results**

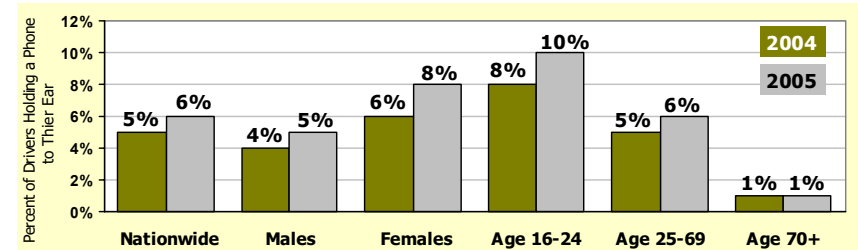
Donna Glassbrenner, Ph.D.

Driver cell phone use increased in 2005, with 6 percent of drivers on hand-held phones in 2005 nationwide compared to 5 percent in 2004. This result is from the National Occupant Protection Use Survey (NOPUS), which provides the only probability-based observed data on driver cell phone use in the United States. The NOPUS is conducted annually by the National Center for Statistics and Analysis of the National Highway Traffic Safety Administration (NHTSA).

The 2005 rate translates into 974,000 vehicles on the road at any given daylight moment being driven by someone on a hand-held phone. It also translates into an estimated 10 percent of vehicles in the typical daylight moment whose driver is using some type of phone, whether hand-held or hands-free. The 2005 survey also found the following:

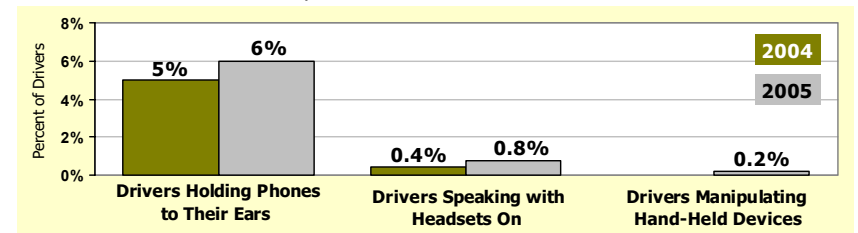
- Hand-held use increased in a number of driver categories, including female drivers (from 6 percent in 2004 to 8 percent in 2005), drivers age 16-24 (8 percent in 2004 to 10 percent in 2005), and drivers in suburban areas (4 percent in 2004 to 7 percent in 2005).
- The incidence of drivers speaking with headsets on while driving also increased in 2005, from 0.4 percent of drivers in 2004 to 0.7 percent in 2005.
- In the first nationwide probability-based estimate of the incidence of hand-held device manipulation, the survey found that 0.2 percent of drivers were dialing phones, checking PDAs, or otherwise manipulating some hand-held device while driving in 2005.

**The Percent of Drivers Holding Phones to Their Ears**



Source: National Occupant Protection Use Survey, NHTSA's National Center for Statistics and Analysis, 2004-2005

**Various Distraction Behaviors, 2004-2005**



Source: National Occupant Protection Use Survey, NHTSA's National Center for Statistics and Analysis, 2004-2005

The Percent of Drivers Holding Phones to their Ears, by Major Characteristics

Motorist Group <sup>1</sup>	2004		2005		2004-2005 Change	
	% of Drivers Holding Phone to Ear <sup>2</sup>	Significantly High or Low Rates <sup>3</sup>	% of Drivers Holding Phone to Ear <sup>2</sup>	Significantly High or Low Rates <sup>3</sup>	Difference in Percentage Points	Confidence in a Change in % of Drivers Holding Phone to Ear <sup>4</sup>
All Drivers	5%		6%		1	84%
Males	4%		5%		1	40%
Females	6%		8%		2	<b>99%</b>
Drivers Who Appear to Be						
Ages 16-24	8%	H	10%		2	<b>93%</b>
Ages 25-69	5%		6%	L	1	70%
Ages 70 and Up	1%	L	1%	L	0	16%
Drivers Who Appear to Be						
White	5%		6%		1	65%
Black	5%		6%		1	57%
Members of Other Races	3%	L	6%	L	3	<b>97%</b>
Drivers on						
Expressway Exit Ramps	6%		7%		1	74%
Surface Streets	5%		6%		1	76%
Drivers Traveling Through						
Light Precipitation	5%		6%		1	66%
Fog	NA		6%		NA	NA
Clear Weather Conditions	5%		6%		1	81%
Drivers of						
Passenger Cars	4%		6%		2	<b>93%</b>
Vans & SUVs	6%		7%		1	52%
Pickup Trucks	5%		5%		0	18%
Drivers in the						
Northeast	3%	L	4%	L	1	81%
Midwest	5%		8%		3	88%
South	6%		5%		-1	41%
West	6%		8%		2	<b>98%</b>
Drivers in						
Urban Areas	7%		7%		0	47%
Suburban Areas	4%		7%		3	<b>99%</b>
Rural Areas	6%		3%		-3	86%
Drivers Traveling During						
Weekdays	5%		7%		2	80%
Rush Hours	5%	5%	8%		3	<b>99%</b>
Nonrush Hours	5%		6%		1	15%
Weekends	3%		4%		1	<b>90%</b>
Drivers With <sup>5</sup>						
No Passengers	6%	H	8%	H	2	88%
At Least One Passenger	2%	L	2%	L	0	<b>92%</b>
Drivers With <sup>5</sup>						
No Passengers	6%		8%	H	2	89%
Passengers All Under Age 8	7%		6%		-1	33%
Passengers All Ages 8 and Older	2%		2%	L	0	64%
Some Passengers Under Age 8 and Some Age 8 or Older	2%		2%	L	0	16%

<sup>1</sup> Drivers of passenger vehicles with no commercial or government markings stopped at a stop sign or stoplight between the hours of 8 a.m. and 6 p.m.  
<sup>2</sup> The percent of drivers who appeared to be holding a phone to their ears. Age, gender, and racial classifications are based on the subjective assessments of roadside observers.  
<sup>3</sup> Rates flagged with an "H" or "L" are statistically high or low in their category at a 90% confidence level.  
<sup>4</sup> The degree of statistical confidence that the 2005 use rate is different from the 2004 rate.  
<sup>5</sup> Among passengers observed in the right-front seat and the second row of seats.  
 NA: Data not sufficient to produce a reliable estimate.  
 Source: National Occupant Protection Use Survey, National Highway Traffic Safety Administration, National Center for Statistics and Analysis

The Percent of Drivers Speaking with Headsets On, by Major Characteristics

Motorist Group <sup>1</sup>	2004		2005		2004-2005 Change	
	% of Drivers Speaking with Headsets <sup>2</sup>	Significantly High or Low Rates <sup>3</sup>	% of Drivers Speaking with Headsets <sup>2</sup>	Significantly High or Low Rates <sup>3</sup>	Difference in Percentage Point Tenths	Confidence in a Change in % of Drivers Speaking with Headsets <sup>4</sup>
All Drivers	0.4%		0.7%		0.3	88%
Males	0.5%		0.7%		0.2	75%
Females	0.2%		0.6%		0.4	<b>96%</b>
Drivers Who Appear to Be						
Ages 16-24	0.8%		1.3%		0.5	49%
Ages 25-69	0.3%		0.6%		0.3	<b>94%</b>
Ages 70 and Up	NA		NA		NA	NA
Drivers Who Appear to Be						
White	0.3%		0.6%		0.3	87%
Black	0.8%		1.3%		0.5	41%
Members of Other Races	0.2%		0.7%	L	0.5	85%
Drivers on						
Expressway Exit Ramps	0.4%		0.9%		0.5	80%
Surface Streets	0.3%		0.6%		0.3	76%
Drivers Traveling Through						
Light Precipitation	0.1%	L	0.4%	L	0.3	73%
Fog	NA		NA		NA	NA
Clear Weather Conditions	0.4%	H	0.7%		0.3	87%
Drivers of						
Passenger Cars	0.4%		0.7%		0.3	76%
Vans and SUVs	0.3%		1.0%		0.7	<b>97%</b>
Pickup Trucks	0.4%		0.3%		-0.1	45%
Drivers in the						
Northeast	1.0%		0.9%		-0.1	17%
Midwest	0.2%		1.7%		1.5	<b>98%</b>
South	0.4%		0.4%	L	0.0	7%
West	0.3%		0.3%	L	0.0	39%
Drivers in						
Urban Areas	0.9%		0.9%		0.0	1%
Suburban Areas	0.2%		0.7%	L	0.5	<b>99%</b>
Rural Areas	0.4%		0.5%		0.1	26%
Drivers Traveling During						
Weekdays	0.4%		0.8%		0.4	<b>91%</b>
Rush Hours	0.6%		0.8%		0.2	47%
Nonrush Hours	0.3%		0.8%		0.5	<b>95%</b>
Weekends	0.2%		0.2%		0.0	30%
Drivers With <sup>5</sup>						
No Passengers	0.5%	H	0.8%	H	0.3	84%
At Least One Passenger	0.1%	L	0.4%	L	0.3	84%
Drivers With <sup>5</sup>						
No Passengers	0.5%		0.8%		0.3	84%
Passengers All Under Age 8	NA		1.0%	L	NA	NA
Passengers All Ages 8 and Older	0.1%		0.3%	L	0.2	65%
Some Passengers Under Age 8 and Some Age 8 or Older	NA		NA		NA	NA

<sup>1</sup> Drivers of passenger vehicles with no commercial or government markings stopped at a stop sign or stoplight between the hours of 8 a.m. and 6 p.m.  
<sup>2</sup> The percent of drivers who appeared to be wearing a headset with a microphone and speaking. Age, gender, and racial classifications are based on the subjective assessments of roadside observers.  
<sup>3</sup> Rates flagged with an "H" or "L" are statistically high or low in their category at a 90% confidence level.  
<sup>4</sup> The degree of statistical confidence that the 2005 use rate is different from the 2004 rate.  
<sup>5</sup> Among passengers observed in the right front seat and the second row of seats.  
 NA: Data not sufficient to produce a reliable estimate.  
 Source: National Occupant Protection Use Survey, National Highway Traffic Safety Administration, National Center for Statistics and Analysis

### The Percent of Drivers Manipulating Hand-Held Devices, by Major Characteristics

Motorist Group <sup>1</sup>	2005		
	% of Drivers Manipulating Hand-Held Devices <sup>2</sup>	Significantly High or Low Rates <sup>3</sup>	
All Drivers	0.2%		
	Males	0.1%	
	Females	0.2%	
Drivers Who Appear to Be			
	Ages 16-24	0.3%	
	Ages 25-69	0.1%	
	Ages 70 and Up	NA	
Drivers Who Appear to Be			
	White	0.2%	
	Black	0.1%	L
	Members of Other Races	0.2%	
Drivers on			
	Expressway Exit Ramps	0.1%	
	Surface Streets	0.2%	
Drivers Traveling Through			
	Light Precipitation	0.3%	
	Fog	NA	
	Clear Weather Conditions	0.1%	
Drivers of			
	Passenger Cars	0.2%	
	Vans and SUVs	0.2%	
	Pickup Trucks	0.1%	
Drivers in the			
	Northeast	0.3%	
	Midwest	0.1%	
	South	0.2%	
	West	0.1%	
Drivers in			
	Urban Areas	0.1%	
	Suburban Areas	0.2%	
	Rural Areas	0.1%	
Drivers Traveling During			
	Weekdays	0.2%	
	Rush Hours	0.1%	L
	Nonrush Hours	0.2%	H
	Weekends	0.2%	
Drivers With <sup>4</sup>			
	No Passengers	0.2%	H
	At Least One Passenger	0.0%	L
Drivers With <sup>4</sup>			
	No Passengers	0.2%	H
	Passengers All Under Age 8	NA	
	Passengers All Ages 8 and Older	0.0%	L
	Some Passengers Under Age 8 and Some Age 8 or Older	NA	

<sup>1</sup> Drivers of passenger vehicles with no commercial or government markings stopped at a stop sign or stoplight between the hours of 8 a.m. and 6 p.m.  
<sup>2</sup> The percent of drivers who appeared to be manipulating some type of electronic device, whether a cell phone, video game, or other device. Age, gender, and racial classifications are based on the subjective assessments of roadside observers.  
<sup>3</sup> Rates flagged with an "H" or "L" are statistically high or low in their category at a 90% confidence level.  
<sup>4</sup> Among passengers observed in the right-front seat and the second row of seats.  
 NA: Data insufficient to form a reliable estimate.  
 Source: National Occupant Protection Use Survey, National Highway Traffic Safety Administration, National Center for Statistics and Analysis.

### Survey Methodology

The National Occupant Protection Use Survey (NOPUS) is the only probability-based observational survey of driver cell phone use in the United States. The survey observes usage as it actually occurs at a random selection of roadway sites, and so provides the best tracking of the extent to which people in this country are using cell phones while driving.

The survey data is collected by sending trained observers to probabilistically sampled intersections controlled by a stop sign or stoplight, where motorists are observed from the roadside. Data is collected between the hours of 8 a.m. and 6 p.m. Only stopped vehicles are observed to permit time to collect the variety of information required by the survey, including subjective assessments of motorists' age and race. Observers collect data on the driver and observe the presence of a right-front passenger and up to two passengers in the second row of seats. Observers do not interview motorists, so that the NOPUS captures the untainted behavior of motorists. The 2005 NOPUS data was collected between June 6 and June 25, while the 2004 data was collected between June 7 and July 11, 2004, excluding the period July 2 - 5.

### Sites and Vehicles Observed

Numbers of	2004	2005	Percentage Change
Sites Observed	1,200	1,200	0%
Vehicles Observed	38,000	43,000	13%

Because the NOPUS sites were chosen through probabilistic means, we can analyze the statistical significance of its results. Statistically significant increases in the use of hand-held phones (respectively, headset use or manipulation of hand-held devices) between 2004 and 2005 are identified in the tables of hand-held use estimates (respectively, headset use estimates or the percent of drivers manipulating devices) by having a result that is 90 percent or greater in column 7. Significantly high and low levels of hand-held use, headset use, or the manipulation of hand-held devices, such as the lower use of hand-held phones by drivers 70 and older than by younger drivers in 2005, are identified by H's and L's in columns 3 and 5. Such comparisons are made within categories, such as road type, delineated by changes in row shading in the tables. The exception to this is the grouping "Drivers Traveling During ..." in which weekdays are compared to weekends, and weekday rush hour to weekday nonrush hour.

The estimates of the numbers of drivers on phones and the percent of drivers using cell phones hands-free were derived via calculations that use data from the publications (Boyle and Vanderwolf, to appear) and (Stutts et al., 2003), and from the Department of Transportation's National Household Travel Survey. These calculations are explained in detail in the upcoming publication, "Driver Cell Phone Use in 2004 - Analysis," expected to be published in the spring of 2005.

The NOPUS uses a complex multistage probability sample, statistical data editing, imputation of unknown values, and complex estimation and variance estimation procedures. See the NHTSA Technical Report referenced below for more information on these procedures.

Data collection, estimation, and variance estimation for the NOPUS are conducted by Westat, Inc., under the direction of the National Center for Statistics and Analysis in NHTSA under Federal contract number DTNH22-00-D-07001.

### Definitions

Drivers were counted as "holding phones to their ears" if they were holding to their ears what appeared to the observer to be a phone. In particular, drivers holding personal data assistants (PDAs) or corded car phones to their ears might have been counted as holding a phone. (They would have been so counted if the PDA or car phone appeared to the observer to be some type of phone.) Drivers need not have been speaking into the phone to be counted as using the phone.

Drivers were counted as "using a headset" if they appeared to have on their heads a device that had a microphone, and they appeared to be speaking. The microphone might be on a wand or other visible attachment. A device identified as a headset need not have a headpiece (i.e., a piece of plastic running across the top of the head), and need not have a wire attached to it. Drivers identified by the survey as using headsets might have been, for instance, using voice-activated software on laptops seated on the seat next to them, rather than speaking on cell phones. Observers did not attempt to distinguish these two behaviors because they cannot be reliably distinguished from the roadside. Likewise, drivers identified as using headsets might have been speaking to a passenger or themselves, rather than speaking into the headsets.

Drivers were counted as "manipulating a hand-held device" if they appeared to be manipulating some type of electronic device, whether a cell phone, video game, or other device. Such behaviors included dialing. Note that a driver characterized by the survey as "manipulating a hand-held device" might or might not have been speaking. If the driver was manipulating a phone while holding it to the ear, the driver would have been characterized as "holding a phone to the ear," rather than "manipulating a hand-held device."

We note that there are means by which drivers can use (or even talk on) cell phones that would neither be recorded as holding a phone nor as using a headset nor as manipulating a hand-held device in the NOPUS. For instance, some phones have a push-to-talk feature, in which the users push a button on the phone when they wish to speak and release the button when they wish to hear the people on the other end of the line via a speakerphone built into the cell phones. Additionally, some cell phones have built-in speakerphones by which drivers can converse on phones hands-free. Drivers conversing on phones using either of these technologies would not appear to roadside observers to be holding phones to their ears (assuming the push-to-talk users are not holding the phones to their ear) and would not be wearing

headsets. If the drivers were using built-in speakerphones, or were using push-to-talk features with their hands out of the data collector's view, they would not be characterized as "manipulating a hand-held device."

The racial categories "Black," "White," and "Other Races" appearing in the tables reflect subjective characterizations by roadside observers regarding the race of motorists. Likewise observers' recorded the age group (8-15 years; 16-24 years; 25-69 years; and 70 years or older) that best fit their visual assessment of each observed motorist.

"Expressway exit ramps" are defined as the access roads to roadways with limited access, while "surface streets" comprise all other roadways. A roadway is defined to have "fast traffic" if during the observation period the average speed of passenger vehicles that passed the observers exceeded 50 mph, with "medium speed traffic" defined as 31 - 50 mph and "slow traffic" defined as 30 mph or slower. A roadway is defined to have "heavy traffic" if the average number of vehicles per lane mile on the roadway during the observation period exceeded 45 vehicles per lane mile, with "moderately dense traffic" defined as 26 - 45 vehicles per lane per mile and "light traffic" having at most 25 vehicles per lane per mile.

Driver cell phone use is largely unrestricted by State laws. No States ban use outright. Currently, three States and the District of Columbia ban the use of hand-held phones while driving. One of these bans took effect in 2001 (New York), two in 2004 (New Jersey in May 2004 and DC in July 2004), and one in 2005 (Connecticut). However, Connecticut's ban took effect in October, after the 2005 NOPUS was conducted. A small number of States otherwise restrict the manner of use, e.g., by requiring sound to travel unimpaired to at least one of the driver's ears or requiring at least one hand on the steering wheel at all times. A few States ban use in certain situations, such as when operating a school bus or public transit vehicle. In addition, some major cities have hand-held bans or otherwise restrict use.

Driving while using a headset is even less restricted by traffic laws. No States or major cities ban use outright. As with driver cell phone use, a small number of States restrict the manner of use, e.g., by requiring sound to travel unimpaired to at least one of the driver's ears, or ban certain types of use in certain situations, such as by banning cell phone use (whether hand-held or hands-free) when operating a school bus or public transit vehicle.

NHTSA's policy on using cell phones while driving is conveyed in the following statements from [www.nhtsa.gov](http://www.nhtsa.gov): "The primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Cell phone use can distract drivers from this task, risking harm to themselves and others. Therefore, the safest course of action is to refrain from using a cell phone while driving." More information on the agency's policy can be found on this Web site.

## For More Information

For detailed analyses of the data in this publication, as well as additional data and information on the survey design and analysis procedures, see the upcoming publication, "Driver Cell Phone Use in 2005 - Analysis," expected to be available at the Web site [www.nrd.nhtsa.dot.gov/departments/nrd-30/nca/AvailInf.html](http://www.nrd.nhtsa.dot.gov/departments/nrd-30/nca/AvailInf.html) in the spring of 2006.

The NOPUS also observes other types of restraints, such as safety belts, child safety seats, and motorcycle helmets. This publication is part of a series that presents overall results from the survey on these topics. Please see other members of the series, such as "Motorcycle Helmet Use in 2005 - Overall Results," and the corresponding NHTSA Technical Report "Motorcycle Helmet Use in 2004-5 - Analysis," for the latest data on these topics.

## References

Boyle, J., and Vanderwolf, P., 2003 Motor Vehicle Occupant Safety Survey, Volume 4, Crash Injury and Emergency Medical Services Report, NHTSA Technical Report, 2003.

Federal Highway Administration, Nationwide Personal Transportation Survey, 1995, and National Household Travel Survey, 2001.

Stutts, J., Hunter, W., and Huang, H., Cell Phone Use While Driving: Results of a Statewide Survey, Transportation Research Board, Annual Meeting CD-ROM, 2003



NHTSA's National Center for Statistics and Analysis

400 Seventh Street SW Washington, DC 20590

## Link Tools:

Reverse Phone Directory -- [www.reversephonedirectory.com/](http://www.reversephonedirectory.com/)  
<[file://www.reversephonedirectory.com/](http://file://www.reversephonedirectory.com/)>

Insurance Information Institute -- [www.iii.org/hottopics/insurance/cellphones/](http://www.iii.org/hottopics/insurance/cellphones/)  
<[file://www.iii.org/hottopics/insurance/cellphones/](http://file://www.iii.org/hottopics/insurance/cellphones/)>

Forbes Magazine --  
[www.forbes.com/forbes/health/feeds/hscout/2006/06/29/hscout533489.html](http://www.forbes.com/forbes/health/feeds/hscout/2006/06/29/hscout533489.html)  
<[file://www.forbes.com/forbes/health/feeds/hscout/2006/06/29/hscout533489.html](http://file://www.forbes.com/forbes/health/feeds/hscout/2006/06/29/hscout533489.html)>

NHTSA -- [www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/Rnotes/2005/809967.pdf](http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/Rnotes/2005/809967.pdf)

VCU -- [www.vcu.edu/uns/Released/2003/march/030703b.html](http://www.vcu.edu/uns/Released/2003/march/030703b.html)  
<[file://www.vcu.edu/uns/Released/2003/march/030703b.html](http://file://www.vcu.edu/uns/Released/2003/march/030703b.html)>

AEI-Brookings --

CTIA -- [www.ctia.org/industry\\_topics/topic.cfm/TID/17](http://www.ctia.org/industry_topics/topic.cfm/TID/17)  
<[file://www.ctia.org/industry\\_topics/topic.cfm/TID/17](http://file://www.ctia.org/industry_topics/topic.cfm/TID/17)> and  
[www.ctia.org/industry\\_topics/content/index.cfm/AID/91](http://www.ctia.org/industry_topics/content/index.cfm/AID/91)  
<[file://www.ctia.org/industry\\_topics/content/index.cfm/AID/91](http://file://www.ctia.org/industry_topics/content/index.cfm/AID/91)>

Laptop Computer Accessories

Dashboard DVD Player

[www.wired.com/news/technology/1.64365-0.html](http://www.wired.com/news/technology/1.64365-0.html)  
<[file://www.wired.com/news/technology/1.64365-0.html](http://file://www.wired.com/news/technology/1.64365-0.html)>

*OSHA Inspection Guide.***IF OSHA SHOWS UP AT YOUR DOOR—DON'T PANIC!****General Considerations**

- Politely introduce yourself and check the compliance officer's credentials.
- You will inform the compliance officer that he/she cannot enter the premises until the person designated to deal with OSHA inspections is present.
- Even if the compliance officer has a warrant, always inform the Safety Officer and Legal Counsel and follow instructions given.

**WHAT ELSE SHOULD I DO?****Pre-Inspection Conference**

- Be courteous and polite throughout the inspection.
- Ask the reason for the inspection and make sure that only the areas specified in the warrant are inspected.
- Take notes of all items discussed or observed during and after the inspection.

312 -- AN EMPLOYER'S GUIDE TO SAFETY AND HEALTH REGULATIONS IN THE WORKPLACE

*OSHA INSPECTIONS  
& ENFORCEMENT  
DO'S & DON'TS*

**The Inspection**

- Accompany the compliance officer at all times during the inspection.
- Duplicate all notes, photos, measurements or readings taken by the compliance officers.
- Do not volunteer any information and only answer direct questions if you know the answer.

**The Closing Conference**

- Record all violations pointed out by the compliance officer.
- Do not argue but point out the reasons why the citations are unwarranted.
- Correct alleged violations requiring immediate attention.
- Send a copy of all materials, notes, photographs or readings to the Safety Officer and Legal.

[www.acca.com](http://www.acca.com)